Office - Supreme Court, U.S.
FILED
JUL 5 1957
JOHN T. FEY, Clerk

TRANSCRIPT OF RECORD

UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT

NO. [redacted] 250

THE TEXAS COMPANY

Appellant

versus

MRS. MAROWIGNE EDNA McCONNELL SAVOIE, Administratrix of the estate of Horace P. Guidry

Appellee

Appeal from the United States District Court for the Eastern District of Louisiana

(ORIGINAL RECORD RECEIVED)

I N D E X

	Page No.
Caption	1
Complaint	2
Copy of Appointment of Tutrix, etc.	6
Answer	7
Pre-trial conference held (MINUTE ENTRY)	8
Interrogatories by plaintiff to defendant	9
Motion to produce certain documents for inspection on behalf of plaintiff	10
Affidavit of Jack W. Thomson, Jr., attached to foregoing motion	11
Motion of plaintiff to amend complaint	13
Hearing on motion for production of documents etc., and order denying same, etc.	15
Motion of defendant to supplement and amend answer	15
Order granting motion of defendant to supplement and amend answer	16
Supplemental and Amended answer	16
Answer of defendant to interrogatories by plaintiff	17
Case called, hearing & continuance	19
Further hearing and verdict	21
Proceedings in Open Court	22
David Nelson	42
Henry Guidry	46
Lyman Porter	66
Nathaniel Butler Knight	99
Marowigne Loretta Guidry	105
Paul Badeaux	113
Ellis Peter Lottinger	121
George Trauth, Jr.	142
Henry Guidry	145
Argument to the jury	149

PAGE NO.

Judge's Charge to Jury ---------- 182

Judgment ---------- 203

Motion for judgment notwithstanding verdict, etc. 203

Memorandum in support of above motions --------- 206

Hearing on motion for judgment notwithstanding verdict and order denying same ---------- 226

Argument on motion for judgment notwithstanding verdict, etc. ---------- 227

Order granting motion for new trial, etc. ------ 231

Remittitur ---------- 231

Notice of Appeal by Defendant ---------- 232

Designation of contents ---------- 232

Supersedeas Bond ---------- 233

Motion & order transmitting exhibits in original 234

Clerk's Certificate ---------- 235

* * * * * *
* * * * *
* * * *
* * *
* *
*

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

* *

MRS. MAROWIGNE EDNA McCONNELL SAVOIE ET AL.

versus

THE TEXAS COMPANY

No. 5288

Civil Action

* *

A P P E A R A N C E S:

May & Carrere
(Ernest A. Carrere, Jr. Esq.)
Attorneys for Defendant - Appellant

Clay, Coleman & Dutrey
(Jack W. Thomson, Jr.Esq.)
Attorneys for Plaintiff - Appellee

...oOo...

APPEAL from the District Court of the United States for the Eastern District of Louisiana, to the United States Court of Appeals for the Fifth Circuit, returnable within forty (40) days from the 28th day of May, 1956, at the City of New Orleans, Louisiana.

...oOo...

COMPLAINT

(Number and title omited) (Filed: August 25, 1955)

Plaintiff, Mrs. Marowigne Edna McConnell Savoie, complaining of the defendant, The Texas Company, respectfully avers:

1.

Plaintiff appears herein as administratrix of the estate of Horace P. Guidry, certified copy of such appointment being attached hereto and made part hereof.

2.

Defendant is a corporation organized under the laws of the State of Delaware with its principal office for the transaction of business in the City of New Orleans, Louisiana, and doing business therein.

3.

Upon information and belief that at all times mentioned herein defendant chartered or leased the oil screw, MARY VIRGINIA.

4.

At all times mentioned herein defendant operated, controlled, managed and navigated the MARY VIRGINIA, a vessel in operation in furtherance of the business of defendant upon the waters of Lake Salvador, Louisiana.

5.

At all times mentioned herein, Horace P. Guidry, decedent, was in the employ of defendant aboard the MARY VIRGINIA, classified by his employer as a parafin scraper. Decedent's duties, which kept him aboard the MARY VIRGINIA almost ninety per cent of his working time, included the navigation of the said vessel to and from and among the various oil wells owned by defendant

and located in Lake Salvador and, further, to perform certain duties relating to maintenance at and upon the individual well sites.

6.

It was the duty of defendant to provide decedent, Horace P. Guidry, with a safe and seaworthy vessel; to furnish decedent with a safe place in which to work, whether his work be aboard the MARY VIRGINIA or at a well site; to furnish decedent with reasonably safe and seaworthy tools and appliances and keep the same in a safe condition; to furnish decedent with a sufficient number of competent co-employees and superior officers; to regulate and inspect the conditions under which said work was done; to promulgate and enforce proper and safe rules for the safe conduct of said work and to warn the decedent of the dangers arising and to be encountered therein.

7.

On or about February 4, 1953 decedent, Horace P. Guidry, while engaged in the course of his duties aboard the MARY VIRGINIA, was called to Well No. 20, located in Lake Salvador, to open a valve at the well site; as he put a wrench on the valve it suddenly, without warning, exploded in decedent's face, the force of the explosion causing his death and blowing him off the well into the water, from which his body was retrieved with a fishing line.

8.

Said injuries and death were directly caused by reason of the negligence of defendant, its agents, servants, employees

and representatives in that they failed to supply the decedent with a safe place in which to work; ordered decedent to open a valve which was defective, improperly maintained, and subject to dangerously excessive pressure, all of which was or should have been known by defendant; failed to supply the decedent with a sufficient number of competent co-employees and superior officers and in that the co-employees and superior officers supplied were negligent; failed to properly superintend and supervise the working area and the work going on at the time of the explosion; failed to regulate and inspect the valve and fitting which exploded; failed to take any measures to correct the dangerous and excessive pressure upon the said valve and lines leading thereto; failed to promulgate and enforce proper and safe rules for the conduct of said work and failed to warn decedent of the impending dangers; negligence in other respects as may appear on trial of this cause.

9.

That said injuries and death were not caused by any fault or want of care on the part of decedent but wholly and solely by reason of the dangerous and defective condition of the valve at well No. 20 and lines connecting thereto and the negligence of the defendant, its agent, servants and employees, as aforementioned.

10.

In the alternative, plaintiff specially pleads the doctrine of res ipsa loquiter and avers that defendant, its agents, servants and employees, had under their complete control the valve which exploded and lines leading thereto, and are best

able to account for the explosion.

11.

Decedent, was predeceased by his parents and was married but once and then to Marowigne Edna McConnell; that of this marriage there were born three children, namely, Marowigne, age 15; Cheryl Ann, age 9 and Horace, age 6; that plaintiff, as administratrix, is entitled to recover of defendant, for the benefit of said minor children, damages for the pain and suffering of decedent and damages to the said minors, all in the amount of Sixty-five thousand and no/100 ($65,000.00) Dollars.

12.

Pursuant to Section 33 of the Merchant Marine Act of 1920, plaintiff hereby elects to maintain this action for damages at law with the right to a trial by jury and to take the benefit of all statutes of the United States modifying or extending the common law right or remedy in case of personal injury to railroad employees.

13.

Plaintiff is entitled to and desires a trial by jury.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of Sixty-five thousand and no/100 ($65,000.00) Dollars, together with all costs and disbursements.

CLAY, COLEMAN & DUTREY
JACK W. THOMSON, JR.

BY:S/ Jack W. Thomson, Jr.
Attorneys for Plaintiff
1649 National Bank of Commerce Bldg.
New Orleans, Louisiana

...ooOoo...

COPY OF APPOINTMENT OF TUTRIX,ETC.

STATE OF LOUISIANA, PARISH OF JEFFERSON

S U C C E S S I O N
OF
HORACE P. GUIDRY AND TUTORSHIP

24th JUDICIAL DISTRICT COURT
For the
PARISH OF JEFFERSON

No. 29351
Filed: May 13, 1953
/s/ Joyce Gomes - Deputy Clerk

This shall certify to all whom it shall concern, that on the 13th day of May in the year of our Lord one thousand nine hundred and fifty-three and the 176 of the Independence of the United States of America, an application was made to the Honorable Judges of the 24th Judicial District Court for the Parish of Jefferson, by Marowyne Edna McConnell, widow of Horace P. Guidry and presently married to Lukelyn P. Savoie praying that she be recognized as natural tutrix and might be appointed tutrix and administrator to her minor children, Marowyne Loretta Guidry, Cheryl Ann Guidry and Horace Paul Guidry, Jr.

NOW KNOW YE, that Marowyne Edna McConnell, wife of Lukelyn P. Savoie has been, and she is hereby appointed tutrix and administrator to the said Marowyne Loretta Guidry, Cheryl Ann Guidry and Horace Paul Guidry, Jr. and that she has fulfilled all the REQUISITES OF THE LAW.

A TRUE COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE
s/ L. Pittman
Deputy Clerk
24th Judicial District
Court,Parish of Jefferson,La

Witness, our Hand and the Seal of said Court, this 13th day of May, in the year of our Lord one Thousand, nine hundred and fifty-three and in the 177 of the Independence of the United States.

/s/ H.J. Delhomme
Deputy Clerk

A N S W E R

(Number and title omitted) (Filed: October 10, 1955)

FIRST DEFENSE

That the complaint fails to state a claim against the defendant, upon which relief may be granted.

SECOND DEFENSE

1.

Defendant admits the allegations of Paragraphs 1, 2, 3 and 4.

2.

Defendant denies the allegations of Paragraphs 5, 6, 7, 8, 9, 10, 11, except, defendant admits that decedent was married but once and then to his said widow and that of the marriage three children were born, 12 and 13.

THIRD DEFENSE

That The Texas Company specifically denies that plaintiff is entitled to relief under Section 33 of the Merchant Marine Act of 1920, for the reason that decedent was never a seaman or member of a crew of a vessel while employed by The Texas Company; that decedent performed no duties of a seaman or a member of a crew in the furtherance of navigation and commerce and decedent's employment was not maritime in nature, and that the accident did not happen aboard a vessel.

FOURTH DEFENSE

Alternatively, that defendant was guilty of no negligence whatever in the premises and that the sole and proximate cause of the accident was the negligence of decedent, in failing to

manipulate the instant valve safely and in a normal and prudent manner.

FIFTH DEFENSE

Alternatively, further, that decedent was guilty of contributory negligence, proximate to the accident, which bars plaintiff's recovery; that such contributory negligence is in the particulars as set out hereinabove.

WHEREFORE, the premises considered, defendant prays that plaintiff's complaint be dismissed, at her cost.

And for all general and equitable relief.

MAY & CARRERE

BY: S/ E. A. Carrere, Jr.
E.A. Carrere, Jr.
Attorneys for Defendant
409 California Building.
New Orleans, Louisiana

...ooOoo...

PRE-TRIAL CONFERENCE

Minute Entry November 17th, 1955 Wright, J:
(Number and title omitted)

Pre-trial conference was this day held.

Present: Jack Thomson, Jr., Esq.,
Attorney for Plaintiff

E. A. Carrere, Jr., Esq.,
Attorney for Defendant.

Trial set for March 12, 1956.

J.S.W.

...ooOoo...

INTERROGATORIES

(Number and title omitted) (Filed: November 21, 1955)

You are hereby notified to answer under oath the interrogatories shown below, within fifteen days of the time service is made upon you through your attorney, in accordance with Rule 33 of the Federal Rules of Civil Procedure.

INTERROGATORIES

1. Describe in detail the well site known as No. 20 in Lake Salvador, which was involved in the death of Horace Guidry on February 4, 1953.

2. Describe in detail the valve and lines leading thereto which also were involved in the death of the said Guidry.

3. How much pressure was on the line leading to the valve?

4. What was the maximum pressure which could be handled through said line?

5. What was the normal pressure handled by said line?

6. What size and type of valve was involved?

7. Following the death of Guidry, was the valve replaced?

8. Give the size and type of valve which replaced the former valve after Guidry's death.

9. Who made the decision to replace the valve?

10. If there is any difference in size or type of the valve which replaced the former valve, please state the reasons for the change.

November 18, 1955.

CLAY, COLEMAN & DUTREY
JACK W. THOMSON, JR.
BY: S/ Jack W. Thomson, Jr.
Attorneys for plaintiff
1649 National Bank of Commerce Bldg
New Orleans, Louisiana

MOTION TO PRODUCE CERTAIN DOCUMENTS FOR INSPECTION

(Number and title omitted) (Filed: February 27, 1956)

Plaintiff, Mrs. Savoie, moves the court for an order requiring defendant, The Texas Company, to produce and to permit to inspect and to copy each of the following documents:

(1) Report of findings of the investigating group, composed of W.Murray Woodyard, Jr., H.R. Alexander, John O'Brien, Lyman Porter and E.P. Lottinger, relative to the death of Horace Guidry, said report reduced to the form of a letter from John O'Brien to the Division Manager, The Texas Company.

(2) All office memoranda, letters or other written documents written or dictated by the various gentlemen named above who participated in the said investigation, which relate to the investigation or the above described "report of findings".

(3) Diagram or sketch of the well cribbing in Lake Salvador involved in death of Horace Guidry prepared by engineer in district office of the Texas Company.

(4) Statement by Paul Badeaux relative to instant case.

(5) Statement by Henry Guidry relative to instant case.

(6) Statement by E.P. Lottinger relative to instant case.

(7) "SF-1" report, being a report of the Guidry death by The Texas Company to its insurer.

(8) All personnel notes, memoranda, citations, certificates and records relating to the employment record of the decedent, Horace Guidry, with the Texas Company.

(9) Disbursement records showing earnings of decedent Horace Guidry, with the Texas Company, and also his rate of pay.

Defendant, The Texas Company, has in its possession, custody or control each of the foregoing documents. Said documents constitute or contain evidence relevant and material to issues involved in this action, as is more fully shown in the attached affidavit.

CLAY, COLEMAN & DUTREY
JACK W. THOMSON, JR.

S/ Jack W. Thomson, Jr.
Attorneys for the Plaintiff
1649 National Bank of Commerce Bldg.
New Orleans, Louisiana

...ooOoo...

AFFIDAVIT OF JACK W. THOMSON, JR.
ATTACHED TO FOREGOING MOTION

State of Louisiana
Parish of Orleans

Personally came and appeared, Jack W. Thomson, Jr., who after being duly sworn, did depose and say that he is counsel for plaintiff in the above captioned action; that the deposition of Mr. George Trout, an executive of the Texas Company, was taken and the said Mr. Trout testified that the Texas Company had in its files the letter described in detail and identified as a "report of findings" on the attached motion; also that their files contain the diagram and the statements by Paul Badeaux, Henry Guidry, E. P. Lottinger and the "SF-1" report, all listed on the attached motion;

Deponent further declared that the Texas Company has in

its files disbursement records and personnel records relating to the decedent, Horace Guidry, and, upon information and belief, certain additional letters and memoranda which form the basis of the "report of findings" described in the attached motion.

Deponent further declared that the "report of findings" is particularly relevant to the issue of liability in this case since, according to the testimony of the said George Trout, it attributes the accident which caused the death of plaintiff's decedent to faulty make-up of line and that it contains the findings of an investigating group which inspected the scene of the accident the day following the occurrence; the office memoranda, etc., requested in item (2) of the motion would also be relevant and material to the issue of negligence by the defendant; the diagram requested in item (3) would assist the court and jury in obtaining a picture of the area where the accident occurred; the statements listed in items (4), (5), (6) and (7) each relate to the circumstances surrounding the death of the decedent in this case; items (8) and (9) are relevant to the issue of decedent's earnings, his length of employment with the company, and the type of record which he had achieved with the company.

s/ Jack W. Thomson, Jr.
Jack W. Thomson, Jr.

Sworn to and subscribed before
me, Notary, this 24 day of February,
1956.

s/ James Julian Coleman
Notary Public

...ooOoo...

MOTION OF PLAINTIFF TO AMEND COMPLAINT

(Number and title omitted) (Filed: February 27, 1956)

Plaintiff moves to amend her complaint in the following respects:

By changing paragraph 11 thereof to read as follows:

11

Decedent, was predeceased by his parents and was married but once and then to Marowigne Edna McConnell; that of this marriage there were born three children, namely, Marowigne, age 15; Cheryl Ann, age 9 and Horace, age 6; that plaintiff, as administratrix, is entitled to recover of defendant, for the benefit of said minor children, damages for the pain and suffering of decedent and damages to the said minors, all in the amount of One Hundred Fifty Thousand and no/100 ($150,000) Dollars.

By adding an additional paragraph as follows:

14

In the alternative, plaintiff avers that the defendant is liable under the compensation laws both Federal and State, and that defendant has failed and refused to pay said benefits.

Plaintiff further moves to amend the prayer of her original complaint so that it will read as follows:

Wherefore, plaintiff demands judgment against the defendant in the sum of One Hundred Fifty Thousand and no/100 ($150,000) Dollars together with all costs and disbursements; in the alternative, in the event

plaintiff's main demand is rejected, then plaintiff desires judgment reserving unto her all rights under the Federal and State Compensation Laws; and for all general and equitable relief appropriate in the premises.

Plaintiff shows that the proposed amendment does not change in any manner the substance of the original complaint and in fact merely reserves unto the plaintiff her right to proceed under the proper compensation laws, whether it be Federal or State, against the defendant in the sole event that the main demand of the plaintiff, which is under the Jones Act, is rejected. Plaintiff further shows that undoubtedly she would entitled to the reservation of rights as prayed for herein and this amendment is merely a precautionary measure and will not effect the forthcoming trial for the main demand.

Plaintiff shows that upon calculation of the damages sustained by the minors involved herein that the original amount prayed for did not cover all such damages and, therefore, desires to amend the prayer to encompass the full amount of damages sustained by the beneficiaries of this action. This amendment also has no affect whatever upon the substance of the demand and the defendant should not be prejudiced insofar as preparation for trial is concerned since the defendant has denied all responsibility in any amount.

CLAY, COLEMAN & DUTREY
JACK W. THOMSON, JR.
s/ Jack W. Thomson, Jr.
Attorneys for the Plaintiff
1649 National Bank of Commerce Bldg.
New Orleans, Louisiana

HEARING ON MOTION FOR PRODUCTION OF DOCUMENTS ETC., AND ORDER DENYING SAME, ETC.

Minute Entry March 7th, 1956 Wright, J:
(Number and title omitted)

This cause came on this day to be heard on motion of plaintiff for production of documents; and on motion of plaintiff to amend complaint.

Present: J. Julian Coleman, Esq.
Jack W. Thomson, Jr., Esq.,
Attorneys for Plaintiff;

Earnest A. Carrere, Jr., Esq.
Attorney for Defendant;

IT IS ORDERED BY THE COURT that the motion of plaintiff to amend complaint be and the same is hereby GRANTED.

IT IS FURTHER ORDERED BY THE COURT that the motion of plaintiff for production of documents be and the same is hereby DENIED as to Nos. 8, 6, 5, 4, 2 & 1. Counsel for parties to agree or work out Nos. 9,7 & 3.

J.S.W.

...ooOoo...

MOTION OF DEFENDANT TO SUPPLEMENT AND AMEND ANSWER

(Number and title omitted) (Filed: March 12, 1956)

The Texas Company moves to supplement and amend its answer in the manner set out in the proposed Supplemental and Amended Answer, annexed hereto, for the reason that in the preparation for trial, defenses became apparent to defendant, and defendant desires to make use of the defenses set out in defendant's defenses Nos. SECOND, SIXTH and SEVENTH.

MAY & CARRERE
BY:S/ E.A. Carrere, Jr.
Attorneys for Defendant
409 California Bldg.,New Orleans,La.

ORDER GRANTING MOTION OF DEFENDANT TO SUPPLEMENT AND AMEND ANSWER

Minute Entry March 14, 1956 Wright, J:
(Number and title omitted)

This matter came on this day for hearing on motion of defendant to supplement and amend its answer.

Thereupon, IT WAS ORDERED by the Court that the motion of defendant to supplement and amend its answer be, and it is hereby, GRANTED.

J.S.W.

...ooOoo...

SUPPLEMENTAL AND AMENDED ANSWER

(Number and title omitted) (Filed: March 14, 1956)

I.

Defendant, The Texas Company, reiterates and realleges its first, third, fourth and fifth defenses.

II.

Defendant amends its second defense to read as follows:

SECOND DEFENSE

1.

Defendant admits the allegations of Paragraphs 1, 2 and 3.

2.

Defendant denies the allegations of paragraphs 4, 5, 6, 7, 8, 9, 10 and 11, except, defendant admits that decedent was married but once and then to his said widow and that of the marriage three children were born, 12 and 13.

SIXTH DEFENSE

That the boat in question was chartered by The Texas Company, with crew, and that the only interest The Texas Company had in said vessel was to have its operator carry its personnel from its dock to various oil installations in the general area.

SEVENTH DEFENSE

That the boat in question is not a vessel, within the contemplation of the "Jones Act".

WHEREFORE, the premises considered, defendant prays that plaintiff's complaint be dismissed, at her cost.

And for all general and equitable relief.

MAY & CARRERE

BY:S/ E.A. Carrere, Jr.
E.A. Carrere, Jr.
Attorneys for Defendant,
409 California Building
New Orleans, Louisiana

...ooOoo...

ANSWER TO INTERROGATORIES

(Number and title omitted) (Filed:March 19, 1956)

No. 1. The well site known as State Lake Salvador No. 20 is located in the Lake Salvador Field, St. Charles Parish, Louisiana; Township 16 S R 22E, 1320' East of Well No. 17, North 36°, 28' west 21916' from USC & GS Monument "IN". The well consists of a Christmas Tree, a 2-inch riser from a 3-inch flow line on the bottom of the Lake. There is a platform around the well 8-foot wide by 18-foot long, approximately 8-foot above the water level, on a cluster of 8-piling. This platform runs north and south.

At the time of the accident there was a fuel line on the platform, which came from sub-station "D" approximately 1800-feet from State Lake Salvador No. 20. This fuel line was a 3-inch line on the bottom of the Lake and with a 2-inch riser from the Lake bottom to the top of the platform.

No. 2. The above mentioned 3-inch fuel line had a 2-inch riser from the bottom of the Lake. This riser extended about 1-foot above the floor of the platform. There was an ell on the riser, a nipple after the ell, a 2" Nordstrom Plug-valve and about 24 to 30-inches of open end pipe after the plug valve.

No. 3. 750#

No. 4. 1500#

No. 5. 750#

No. 6. 2" Nordstrom plug-valve, fig. #2344, 4000# test 2000# working pressure.

No. 7. Yes.

No. 8. 2" WKM Gate Valve, 2,000# Test, 1,000# working pressure.

No. 9. We do not know exactly who made the decision to replace the valve. It was probably the production foreman, E.P. Lottenger, however. The valve had to be replaced because the original one was lost and it was necessary to have a valve on the line.

No. 10. The valve which replaced the former valve was a different test valve due to the fact that the valve which was on the line originally was larger than required. The maximum pressure which could be handled was 1500# and the normal pressure is 750#, therefore, a 2000# test valve is all that is

necessary.

A gate valve was used instead of a plug valve due to the fact that some of our people thought that a gate valve would be easier to handle, although there are pros-and-cons on this subject.

THE TEXAS COMPANY

BY: S/ Lyman Porter
Lyman Porter

AFFIDAVIT

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, a Notary Public, duly commissioned and qualified, personally came and appeared: LYMAN PORTER, who, being first duly sworn, did depose and say:

That he is the duly authorized Dist. Supt. of The Texas Company; that he has answered the foregoing Interrogatories in his said capacity and that the said answers are true and correct, to the best of his knowledge, information and belief.

s/ Lyman Porter

Sworn to and subscribed
before me, Notary, this
1 day of March, 1956.

s/ E.A. Carrere, Jr.
Notary Public

...ooOoo...

CASE CALLED, HEARING AND CONTINUANCE

Minute Entry March 19th, 1956 Wright, J:
(Number and title omitted)

This cause was this day called for trial.

Present: James Coleman, Esq.,
Jack W. Thomson, Jr., Esq.,
Attorneys for Plaintiff;

E. A. Carrere, Jr., Esq.,
Attorney for defendant.

On motion of counsel for defendant, all witnesses were called, instructed and segregated.

The following named jurors were called and sworn on their voir dire and being acceptable to all parties were sworn to well and truly try the issue joined herein, to-wit:

1. Thomas E. Tate
2. Robert D. Balfour
3. August J. Marks
4. Miss Esther Marie Naquin
5. Walker Saussy
6. Walter John Mueller
7. Charles Jacob Imhof
8. Walter T. Archer, Jr.
9. Joseph G. Calkins
10. Anthony Philip Ingargiola
11. Otis J. Arceneaux
12. Thomas J. Aldridge

Balance of the jury excused subject to call.

WITNESSES FOR PLAINTIFF:

David Nelson - sworn by Dy. Clk.
Ed. Deramee - sworn by Dy. Clk. (interpreter)
Henry Guidry - do
Lyman Porter - do
Nat B. Knight do
Marowigne L. Guidry do

Counsel for plaintiff announced that they would rest. Jury retired from court room. Counsel for Defendant moved orally for directed verdict - argument - DENIED. Jury returned into Court.

WITNESSES FOR DEFENDANT:

Paul Badeaux - sworn by dy. clk.
Ellis P. Lottinger do
George Trauth, Jr. do

Counsel for defendant announced that he would rest; counsel for plaintiff announced that he would rest; Jury retired from court room. Counsel for defendant moved orally for a directed

verdict - DENIED. Jury returned into court and was excused until tomorrow morning at 10:30 A.M.

J.S.W.

...ooOoo...

FURTHER HEARING AND VERDICT

Minute Entry March 20th, 1956 Wright, J:
(Number and title omitted)

This cause as continued from yesterday was this day resumed; counsel for the respective parties, as well as the jurors empanelled in said cause, being all present, the trial was proceeded with;

Argument by counsel for plaintiff. Counsel for defendant moved for a new trial based on statements of counsel for plaintiffs in objections to argument - DENIED. Argument by counsel for parties; Court charges jury. Jury retires to deliberate as to its verdict. After deliberation jury returns with following verdict to-wit:

"1. Was the Mary Virginia operated and controlled by the Texas Company? Yes

"2. If so, was Horace Guidry a member of the crew of that vessel? Yes

"3. If so, was the work in which he was engaged at the time of his death pursuant to his employment as a member of the crew of the Mary Virginia? Yes

"4. If so, was his death proximately caused by the negligence of the defendant or its agents? Yes

"5. If so, was Horace Guidry guilty of contributory negligence. No.

"6. State the award the plaintiff should receive in this case. $80,000 (Eighty Thousand Dollars & no/100 cents)

"Signed - Walker Saussy
Foreman
March 20, 1956"

IT IS ORDERED BY THE COURT that the verdict of the jury be recorded and it is done accordingly, and FURTHER ORDERED that the jury be excused subject to call.

J.S.W.

...ooOoo...

PROCEEDINGS

(Number and title omitted) (Filed: April 20, 1956)

APPEARANCES:

JACK W. THOMSON, JR., Esq. JAMES J. COLEMAN, Esq.	CLAY, COLEMAN & DUTREY National Bank of Commerce Building New Orleans, Louisiana Attorneys for Plaintiff
ERNEST A. CARRERE, JR., Esq. W.J. CONRAD, Esq.,	MAY & CARRERE California Company Building New Orleans, Louisiana Attorneys for Defendant

(Above entitled and numbered matter came up for trial on this, the 19th and 20th days of March 1956, in the Courtroom, United States Post Office Building, New Orleans, Louisiana; THE HONORABLE J. SKELLY WRIGHT, District Judge, presiding).

o-o-o

MORNING SESSION

(Monday, March 19th, 1956)

THE COURT:

In Civil Action Number 5288, Mrs. Marowigne Edna Savoie, Administratrix, versus The Texas Company. Is the plaintiff ready?

MR. THOMSON:

The Plaintiff is ready.

THE COURT:

Is the Defendant ready?

MR. CARRERE:

The Defendant is ready.

THE COURT:

Call the Jury.

(Thereupon, a jury was duly empaneled and sworn.)

THE COURT:

Ladies and gentlemen, some of you may not have been on a jury before in a Civil case proceeding, like this. The Plaintiff's lawyer will now get up and tell you what he hopes to prove with his witnesses. What he says is not evidence. You get the evidence from the witnesses as they testify, but he will tell you what he hopes to prove so that you will understand the evidence as it unfolds. Then, the Defendant's lawyer will do the same thing. He will tell you what his witnesses, what all his witnesses will say, or, at least, what he hopes they will say. Again, what he says is not evidence. The evidence comes from the witnesses, but the purpose of these statements by Counsel is to acquaint you with what the case is about so that you will understand the evidence as it is given to you from the witness stand.

Counsel for the Plaintiff, first.

Let's proceed.

MR. COLEMAN:

Gentlemen of the jury, we will try to prove, and in order to try to keep it in order while we talk, I will explain to you the different steps that we will take.

First, we will introduce a list of the exhibits, and I will try and tell you the reason for the exhibits. The first exhibit, which is agreed upon between Counsel, is that we are entitled to introduce to you a copy of the letter of administration of Mrs. Savoie. This shows that the real Plaintiffs in this case are Mrs. Savoie's three children, and that his wife is merely acting as administratrix for these children. In other words, the exhibits that you will see, that we will introduce to you, will show to you who the Plaintiffs are, and in the event there is a judgment in their favor, that anything that is received will have to be under the orders of the court in this legal administration, and every penny of it will be handled by the court, and can only be expended for the use and benefit of the true Plaintiffs in this case.

Next, we have a letter, and in order to simplify things before the case begins, we usually try to agree on things that we can agree on, and you will see a letter from the Defendant Counsel that will be introduced as an exhibit. This letter will show you that Mr. Guidry, who was an employee of The Texas Company, worked for The Texas Company for a period of sixteen years; that during the last three years his average salary was around $4800.00 a month--that should be $4800.00 a year.

Then, the next exhibit that you will see will be a coroner's report. It will speak for itself. You will be able to study it and read it, and see what happened to Guidry when the coroner examined him, the letter being proof that Guidry was killed.

We will then introduce, in proper order, some christening papers that will show to you Guidry's age at the time of his death. After that, we will introduce birth certificates showing to you that when Guidry died, that he had three children; that the first, Horace Paul Guidry, Junior, was four years and eight months at the date of his death; that his daughter Cheryl Ann, was seven years and four months at the date of his death, and that Marowigne, the third child, was twelve years and eleven months at the date of Guidry's death. Then we will introduce and exhibit, the American Experience Mortality Tables, and that will show to you, and the court will instruct you on whatever the law is about that, that he had a life expectancy when he died of twenty-four and a half years. That is the last exhibit that you will see, in the line of exhibits.

Then, the first witness that you will hear will be a photographer, and he will merely show you a picture, and we will introduce that picture, showing to you the physical setup of where Guidry was working, and that was at Lake Salvador, which is a large lake that has quite a few oil wells, some thirty, over thirty oil wells in it, all of them owned by the Defendant, The Texas Company. Now, the first witness, in the

order of presentation, as we said, will be the photographer. Then, we have another witness, Gilbert Matherne, who will be the next witness. He is subpoenaed and he hasn't appeared yet. I failed to tell you what he will testify, but we will just wait to see if he comes into court. He was subpoenaed.

So, the first actual witness that you will hear will be the brother of the deceased, Henry Guidry. Now, I warn you before he comes, that the man is paralyzed. He doesn't speak English. There will be an interpreter that will interpret to you what his answers to our questions are, and also the Defendant's questions are. This man was a captain on the boat that the deceased was killed on. He was also, as I mentioned to you, the brother of the deceased. We will try to bring out, as best we can--although I am afraid many of his answers are going to be yes or no, because of his paralytic stroke that he had--but we'll try to prove through him that he was operating on a boat that was under the complete control of The Texas Company; that his job was to take orders from his brother; that his brother would act as a navigator on this boat, which they would stay on the boat continuously, and only get off the boat when it was near for him to do what is called "parafin scraping," that there were only two of them on the boat with another Texas Company employee as parafin scrapers, and that in truth and in fact the brother was and has been for many years operating in this capacity as a parafin scraper, and that he had to work as a seaman on the boat; that he would tie up the boat when the boat would come into a well, and that he would then

get out and perform any duties, and that he would get back nn the boat and go to the next place. And, that he would have complete control, and, in fact, the brother will testify that the whole reason he got his job was that his brother, The Texas Company employee, the deceased, got him the job; that he didn't know anybody at all, except The Texas Company employee, the deceased.

We don't know how well he is going to be able to describe the accident that he saw, but he was an eyewitness to it, and he was there when the accident occurred. In fact, he will testify that the accident happened in this manner, although we hope to have another eyewitness to it. Then, the accident, and that we will get to, and we will probably have to use them,since, you understand that we are in a position where we will have to prove our case as best we can with employees of The Texas Company. The Plaintiffs weren't there when their father was killed. They know nothing about it, so we have to rely completely on The Texas Company's employees, and we called them with the full knowledge of knowing that they are Texas Company employees, and rely on their honesty and integrity to tell you the true facts of what happened. So you will probably get a better description of the accident from Paul Lottinger, who will be the next witness. Lottinger is a superintendent of The Texas Company. He was there that day.

He, we hope, will testify to the effect that as he walked up to this valve, that there was a valve on a small platform, and we will introduce to you a little map showing the platform.

There was a valve on this platform, and that he walked up to break the valve, in other words, to test just what was the gas pressure, or what was in this gas line; that he decided he couldn't do it himself, and that he called Mr. Guidry, the employee off his boat, who was a parafin scraper, and said, "You open the valve." That Mr. Guidry then went back to the boat, got one of the tools off the boat, brought it to the valve, put the wrench he received off the boat on the valve, and started to break it. By "break it" I mean to open it; that he pulled one, and started to pull the second time, and then before anything else happened, the complete valve, the pipe, blew into his stomach and chest, and face, and threw him out into the lake, and that after a great deal of work they found his body and pulled him up. The corner's report will show you the condition of Guidry's body.

Next we intend to prove, and again, by Texas Company's witnesses, that a man by the name of Mr. Porter, who was sent out to investigate the accident by The Texas Company the next morning, saw the physical setup of the accident, and he will testify that the death of Guidry was caused and contributed to by the fact that there were faulty threads connecting the elbow with the pipe, and that when the pressure came up there, the faulty threads gave loose, and that threw the valve, the whole pipeline, that was blown off against Guidry.

We will then attempt to prove by witnesses, as you know, that this man had been working for sixteen years with The Texas Company, and so all of his friends were Texas Company employees.

so we will have to call another Texas Company employee who knew Guidry and his family, who knew that Guidry loved his children, and who knew more than anything else, Guidry was not only the material support for his children, but that he was the spiritual and moral support for his children. We hope seriously that there is not going to be any question that we are going to get into as to proving anything definite, but we are prepared to prove by our witnesses that as the head of the family, he not only gave the support of a father, but was father and mother to his children thereby making it a much greater loss, due to his death, with such young, tender children. In order to further emphasize this fact and counteract the fact that you will probably hear that his wife had left him at the time that this accident occurred, and that his wife happens to be the legal administratrix that had to file this suit, we will bring into court Mr. Nat Knight, who was the Public Service Commissioner, and he will tell you the true facts of this family's situation. He will let you know a little bit about what Guidry was giving and had given to his children.

Then, we will end up by showing you the true Plaintiff and she is the only one that we dare call in this case, Marowigne Loretta Guidry, the older daughter, and she will testify to you as to what her father contributed, and just what type of man he was, and what his death meant to them.

After you have heard all of these witnesses, then we have done our part as attorneys, and we have presented the best way we know how the true facts, and it will then be up to you to determine what our clients, these three children, are entitled to.

MR. CARRERE:

Ladies and gentlemen of the jury: The nature of this case is one to test under which act, specifically, these people should be paid, from the time of the accident until the time the suit was filed, for purpose of determining whether the administratrix of the estate of the decedent is entitled to recover under the Jones Act, or whether his heirs are entitled to recover under the Louisiana Workmen's Compensation Act. These folks have actually been paid by The Texas Company what the Louisiana State Compensation Act requires them to be paid--

MR. COLEMAN:

Your Honor--

THE COURT:

Just a minute.

MR. COLEMAN:

If your Honor please, we object to Counsel arguing law to the jury, and that is not giving facts, since it appears that it is just argument of law. That is what that appears to be, and that is up to the court to determine.

MR. CARRERE:

I think if anyone was arguing the law rather than the facts, I think Counsel was. We have been sued here under both Acts, if your Honor please. We have been sued under the Jones Act, and in the alternative under the State Workmen's Compensation Act--

THE COURT:

Let's not get into the law; just give the jury what you intend to prove. We are not trying any Workmen's Compensation

case; we are trying only the Jones Act case today.

MR. CARRERE:

But, if your Honor please, we were to work up both parts of the record, and if your Honor recalls your instructions at the pre-trial, we were to set the entire case up today. I certainly intend to prove that we have complied, unless the court holds to the contrary.

THE COURT:

The jury knows about this. The jury knows that you have been paying Workmen's Compensation. You have already told them that.

Let's get to the facts of this case.

MR. CARRERE:

We shall attempt to prove, with reference to the Jones Act claim made herein by the Plaintiff, that this boat, and, and in fact, it was a lugger-type boat, that it was owned by an individual by the name of Kennedy, and it was leased under charter at so much a day with crew, to The Texas Company. At the time in question the decedent, who was a long time employee with The Texas Company, and a very satisfactory employee, and was in the capacity of roustabout, which means they do laboring work for The Texas Company, which is semiskilled type of work. This man was engaged in the Lake Salvador Area.

The Texas Company has a producing field here, we will show, and after a well is brought in a platform is constructed. The platform is on piles which are driven down into the bottom of the shallow depth lake, and a platform of wood is constructed

at the well site, and on each one of these platforms is what we call a Christmas tree, a gadget which holds the pressure of the well and regulates the pressure of the well, and hold it in check.

On this particular well platform at which the accident happened there was another pipe, which was for the purpose of bringing gas to that location to be used when the well was reworked, or some outside work was done on the well in question. This pipe, we will show, came up from the bottom of the lake and came on an upright, vertical, position through this platform (indicating with hands), and then having attained the platform, it went up some two to three feet above the platform, horizontal part of the platform, in other words, the walking space on the platform. Then, after going two or three feet up in the air, there was an elbow, just a bend in the pipe that you all are familiar with, and after this elbow there was a little piece of pipe in a horizontal plane out from it, and then a valve, and then beyond the valve was another piece of pipe which just extended out in a horizontal plane just from the valve out, and was open to the open air, atmosphere.

We will show, we believe, by the evidence, that the decedent was not a seaman. He was not a member of the crew of any vessel, and particularly the vessel in question, that the vessel was operated by a man, and we say, in the employ of the owner, Mr. Kennedy; that he paid him, that he had the right to hire them and to fire them; that the work record of the decedent will show that his time was consumed, first of all, in riding

from The Texas Company docks to these well sites and these platforms, such as I have indicated to you, and that while in the process of riding to and from his various sites he was paid, not his full salary, but to comply with the law, he was paid seventy-five cents merely as a portal-to-portal time; that his entire time, working time for The Texas Company, was taken up scraping the parafin from wells and doing jobs, such as checking pressure at these well sites and on doing painting work on occasions, and other work that a roustabout does, and that, consequently we hope to show, after the court instructs you as to the law, that he was not a member of the crew of this vessel but merely was an incidental passenger on it going from place to place.

Now, also, so that there will be no mistake about it, we will show this accident did not happen aboard the vessel. It happened on the platform. And, we believe we will show the work he was doing on that platform was in pursuance to his employment as a roustabout in checking the parafin and scraping it from this well, or checking pressure, or checking the pressure on this side line that I spoke about, this gas line, which had no relation to the navigation of that small vessel that brought him there. And, as a consequence, after the court has instructed you to the law, we will argue the gentleman was not covered by the Jones Act for seamen members of crews, but that some other Act is applicable, which issue is not before us here today.

Now, Counsel has mentioned that an administratrix in this

case was brought into being for the purpose of representing these descendants, or the decedent's representatives in this particular suit, which is a requirement of the Act. I make no complaint about that, but in so doing, the true parties to benef t by this suit are the children of the decedent and his wife. As Counsel mentioned to you, we, also, of course, will urge the fact that there is no recovery indicated with reference to any loss on the part of the wife, because we say, with all due deference, we not knowing the personal situation, we should show she had left the home of her husband some months or maybe a year or two prior to this accident with no intention of returning, and was not living as a member of the household, and, therefore, we will argue thereafter she was not entitled to consideration.

In summing up as to what we shall prove, we will prove The Texas Company did not operate the boat. It was operated by an independent contractor, but primarily this man, the decedent, was not a member of the crew of this little vessel. His work was simply that of a roustabout. And, finally, he was not injured in his capacity, if you so hold he was a member of the crew, in his capacity as a member of the crew-- he had left the boat and was doing work of The Texas Company far foreign from any navigation of that boat, and on a fixed platform.

MR. COLEMAN:

If your Honor please, just so the jury will not be mixed up on the issues, in our original petition, nor right now, we

have never asked for five cents for the wife, nor do we make any claim whatsoever for her in any way whatever, anything, if she is entitled to it. There is nothing for loss and benefit as far as the wife is concerned, but purely and simply for the children.

THE COURT:

Well, under the law, she is entitled to her share as the administratrix of the estate, and the laws of Louisiana decide how the estate of the decedent shall be divided, so I don't think that you can waive anything in connection with the wife, which the law of Louisiana takes care of the distribution.

Now, ladies and gentlemen, you have heard the Counsel make the statements, and I think you understand now what the case is about. We are going to consider primarily in this case whether or not this man who died, who was killed in the accident which has been described, was a seaman, a member of the crew of the Mary Virginia. If he is a member of the crew, or if he were a member of the crew of the Mary Virginia in connection with his work with The Texas Company, then he has a proper claim under the Jones Act, which is an act for seamen, provided, of course, negligence on the part of The Texas Company is also shown.

So the primary, first issue in the case then is the status of this decedent. Was he a member of the crew of the Mary Virginia? Unless he was a member of the crew of the Mary Virginia he cannot recover under the seamen's act, the Jones Act. The Plaintiff says he was a member of the crew under the facts of the case as they will be developed by the witnesses.

The Defendant says he was not. That is the crucial issue in the case.

In order to save the jury's time, I don't think it is necessary to go through the documents. I think there is no question about the status of the parties before the court. In other words, the lady is the wife of the decedent, and these children are the children, is that right?

MR. CARRERE:

That is correct.

THE COURT:

There is no question.

MR. THOMSON:

I will do this hurriedly.

THE COURT:

Suppose you just make a statement to the jury and let's get it over with. In other words, the man's injuries, and which killed him, are not important to the jury. The only thing that is important is his death, and that is stipulated, agreed, in the pleadings, is that correct?

MR. CARRERE:

We agreed in the first place, that the gentleman died instantly. We raised no question about it.

MR. THOMSON:

Merely to complete the record, I offer, introduce, and file in evidence the certified copy of the letters of administration of Mrs. Savoie, appointed by the Twenty-fourth Judicial District Court as administratrix of the estate of her late

husband, and the said certified copy being attached to our original petition.

Now, marked as Exhibit Two, I offer in evidence the letter from The Texas Company setting forth the total wages earned by the decedent in that last three years.

THE COURT:

Just read that to the jury.

(Whereupon, the document above referred to, marked Guidry Exhibit-2 for identification, was received in evidence.)

MR. THOMSON:

This letter is to Mr. E. A. Carrere, in the California Company Building, New Orleans, Louisiana: "Dear Sir: In compliance with your telephone request to our Harvey District Office for a statement of earnings of Mr. Horace Guidry for the years 1951, 1952, and 1953 until his death, we are enclosing herewith photostatic copies of Form PO-62, Employe's Record, which shows that Mr. Guidry earned the following: Year 1951, total wages, $4399.10; year 1952, $4674.07; year 1953, up to the date of his death, being February 4th, 1953, $929.01. We trust the attachments will enable you to proceed with your handling of this claim. If, however, we can be of further assistance, please advise. Yours very truly, J.O. Parris, The Texas Company." That has been marked Exhibit-2.

MR. CARRERE:

In that respect I ask that the photostatic copies be substituted. I loaned this to Counsel with the understanding that that would be done, and they have used this for an exhibit.

THE COURT:

Counsel will photostat it.

MR. THOMSON:

I will be happy to do that.

We now offer in evidence, the report of the Coroner's Office for the Parish of Jefferson, dated February 4th, 1953. "Autopsy Protocol, Case Number 49. Name: Horace Guidry, age forty-five, approximately. Prosector; J. G. Allen, M.D. The body is that of a white male--"

MR. CARRERE:

If your Honor please, we admit that he died instantly, and I believe beyond that anything is irrelevant and immaterial.

MR. THOMSON:

At the pre-trial conference we discussed the question of calling the coroner and the pathologist who handled this. We understood that it was agreed this would be admitted by--

THE COURT:

The only question is his death, and it is admitted that he died in this very accident. It is not necessary to bring in whether he got hit in the stomach, head, or his ear, the important thing is his death.

MR. THOMSON:

One of the elements of damages, if your Honor please, is the conscious pain and suffering, if any, endured by the decedent prior to death.

THE COURT:

You alleged that he died immediately, don't you?

MR. CARRERE:

Yes, sir.

MR. THOMSON:

We alleged he was knocked off the platform and fell into the water, and that he never came up.

THE COURT:

Well, then there is no claim for any suffering. He died immediately.

MR. THOMSON:

We leave that to the jury to determine, your Honor.

THE COURT:

The court's ruling is that the proof shown there, in the coroner's report, is to the effect that the man died in this accident, and that he died immediately.

Let's proceed on to your next exhibit.

MR. THOMSON:

This report, if your Honor please, is also probative on the general condition and the health of Mr. Guidry at the date of his death. That would bear or be relevant on the question of damages, as to whether he would be able to contribute to the support of his children throughout his life.

THE COURT:

It shows he was healthy?

MR. THOMSON:

Yes, it does.

THE COURT:

Read the part that shows he was healthy.

MR. CARRERE:

We made no special defense in that respect.

THE COURT

Let him read that part.

MR. THOMSON:

"The right upper and midlobes are filled with blood. The left lung does not appear unusual. The heart is normal in size and position; the major vessels are intact. There is minimal coronary sclerosis. The coronary arteries are patent throughout. No abnormalities are noted on exploration of the abdomen." The rest of the report deals with the actual condition of the body.

THE COURT:

He was a normally healthy person at the time he was killed.

MR. THOMSON:

To the extent that it was read into the record, I offer this as Exhibit Number Three.

(Whereupon, the document above referred to, marked Guidry Exhibit-3 for identification, was received in evidence.)

MR. THOMSON:

As Exhibit Number Four I offer in evidence the christening papers of the decedent, Horace Guidry, proving his date of birth to be February 6th, 1908. That is marked Exhibit Four.

(Whereupon, the document above referred to, marked Guidry Exhibit-4 for identification, was received in evidence.)

MR. THOMSON:

As Exhibits Numbers Five, Six, and Seven, I offer in evidence the certified copies of birth certificates of the three children involved here, Horace Guidry, Junior; Cheryl Ann Guidry; and Marowigne Loretta Guidry.

THE COURT:

And these show that these children are the children of the decedent, is that right?

MR. THOMSON:

Yes, they show they are the children, and their age at the time of his death, for the boy, Horace Guidry, Junior, age four years five months; for the younger girl, Cheryl Ann Guidry, age seven years four months; and the oldest girl Marowigne Loretta Guidry, age at date of death of her father, twelve years eleven months.

(Whereupon, the documents above referred to, marked Guidry-5, Guidry-6, and Guidry-7, for identification, were received in evidence.)

MR. THOMSON:

I will offer in evidence as Guidry Exhibit Eight, the American Experience Mortality table showing the decedent at the time of his death to have had a life expectancy of twenty-four and a half years.

MR. CARRERE:

In that respect I have no objection to using the American Experience table to establish that at forty-five years that you have a life expectancy of twenty-four point fifty-four, but

I reserve all my rights with reference to arguing the requirements, how that fits into the Jones Act picture, and whether or not the man is entitled to anything beyond support up to the twenty-first year of his children.

THE COURT:

That will be all right, sir.

(Whereupon, the document above referred to, marked Guidry-8 for identification, was received in evidence.)

THE COURT:

Call your first witness.

DAVID NELSON: called as a witness at the instance of the Plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMSON:

Q What is your occupation, Mr. Nelson:

A Photographer.

Q In that capacity, as a professional photographer, were you employed by our office to make certain pictures?

A Yes, sir.

Q When were these pictures made that I am now showing you?

MR. CARRERE:

Just a moment. (Photographs shown to Counsel.)

BY MR. THOMSON:

Q And I mean the four pictures which I have marked for identification, Guidry-9, 10, 11, and 12?

MR. CARRERE:

This is the first time that I have seen these. I have no objection to them except not knowing the situation myself, I reserve all rights with reference to explaining or having them verified by a Texas Company employer that I'll call as a witness.

THE COURT:

All right.

BY MR. THOMSON:

Q Will you examine those photographs, Mr. Nelson, and tell us when they were taken? (Photographs to witness.)

MR. CARRERE:

I have no objection to them, your Honor, to save time, unless there is something further Counsel has in mind. There is no need to question the photographer, as far as I'm concerned.

THE COURT:

What are these pictures of?

THE WITNESS:

They were pictures of the installation in Lake Salvador.

THE COURT:

On what date?

THE WITNESS:

I took the pictures on March 9th.

BY MR. THOMSON:

Q When were they given to our office, Mr. Nelson?

A I delivered these pictures to Mr. Thomson's residence Saturday, Saturday evening.

Q This past Saturday?

A Yes.

Q Have these pictures been altered in any way or do they represent the true and correct result of your photograph?

A They haven't been altered in any way.

MR. THOMSON:

I offer these pictures in evidence, your Honor, subject to the linking by the other witnesses.

THE COURT:

Very well. Step down. Show them to the jury.

(Whereupon, the documents above referred to, marked Guidry-9, 10, 11, and 12, for identification were received in evidence.)

Call your next witness.

MR. THOMSON:

I would like to call Henry Guidry.

HENRY GUIDRY: called as a witness at the instance of the Plaintiff, having been duly sworn, was examined and testified as follows:

MR. CARRERE:

If your Honor please, as I understand it there will be an attempt by Counsel to use an interpreter herein. Before the interpreter is actually used by the court, I would like to question the interpreter.

THE COURT:

You would like to question the interpreter? Well, is the interpreter in the courtroom?

MR. THOMSON:

Yes, sir. Mr. Deramee, please.

THE COURT:

Do you want to question him under oath?

MR. CARRERE:

Yes, I do.

THE COURT:

You can do it right there.

EDMOND DERAMEE: having been duly sworn, was examined and testified as follows:

BY MR. CARRERE:

Q Just stand over here so the court and the jury can see you, right there.

Where do you live?

A I live in Thibodaux, Louisiana.

Q And what is your occupation?

A I am an Attorney-at-Law.

Q You are the Mr. Derame who attended Tulane, in other words, before being admitted to the bar?

A Yes, sir.

Q And do you have any connection with any Counsel in this case?

A No, none whatsoever.

Q Do you happen to know Mr. Guidry, who is on the witness stand?

A No, I didn't know him. I met him when I came into court this morning. I didn't know him before.

Q Mr. Derame, you are familiar thoroughly with the French language?

A I am familiar with the French language as spoken in Lafourche Parish, yes.

Q And you are well familiar with the terms of the court that are used in that parish?

A Yes, sir.

MR. CARRERE:

I have no objection in using Mr. Derame. I didn't know who he was, otherwise I may not have even questioned him. However, I would like to ask for the court's permission to have Mr. Deramee, when there is any question as to what the man answered in his own mind, to please let us know. Give us the benefit not only of the verbatim translation, but if there is any question in your mind, please let me and the jury know.

THE COURT:

Swear the interpreter.

EDMOND DERAMEE: was duly sworn to honestly and accurately translate from French to English and English to French the testimony of the witness.

HENRY GUIDRY: called as a witness at the instance of the Plaintiff, was duly administered the oath in the French language, was examined, and testified as follows:

THE COURT:

Mr. Interpreter, suppose you stand along side of the witness, and what we want you to do is to literally interpret the questions Counsel asks, and literally give the reporter

and the jury what the witness says. In other words, we don't want any conversation between you and the witness; all we want you to do is to act as a conduit for questions to the witness and the answers from the witness to the jury.

THE INTERPRETER:

Yes, sir.

THE COURT:

Proceed just as though the witness were going to answer the questions.

DIRECT EXAMINATION

BY MR. THOMSON:(Through interpreter.)

Q What is your name?

A Henry Guidry.

Q Where do you live?

A Galliano.

Q Are you related to the late Horace Guidry?

A Horace, my brother.

Q On the date when your brother died, where were you working?

A With him--me, Paul Badeaux, on boat .

Q What was the name of the boat?

THE INTERPRETER:

He didn't understand--

THE WITNESS:

Virginia.

BY MR. THOMSON:(Through interpreter).

Q And what body of water was the boat on?

A Lake Salvador.

Q What time of day did the accident happen?

A Approximately 2 o'clock.

Q Before the accident happened, how many men were on the boat?

A Three--me, Horace, and Paul.

Q By "Paul", do you mean Paul Badeaux?

A Yes, Paul Badeaux.

Q Was the boat near any particular well site?

A Tied to the well, right next to the well.

Q Do you know what number well that was?

A Twenty. Number twenty well.

Q Who had tied the boat to the number twenty well?

A Paul, Mr. Paul.

Q Paul Badeaux?

A Yes, sir.

Q How did the Mary Virginia come to be at that well?

THE INTERPRETER:

He answered "right next to the well."

THE COURT:

Rephrase the question.

BY MR. THOMSON: (Through interpreter)

Q What was your title on the boat?

A I piloted the boat and attended to the machine, the engine.

Q Who told you to go to that particular well?

A Horace told me to go to the well. He wanted to go to see well.

Q Were there any other people near the well and not on the boat?

THE INTERPRETER:

I think he'd better ask the question again.

THE COURT:

Repeat what he said.

THE INTERPRETER:

"Just me, I was near the well on the boat."

THE COURT:

Repeat the question to him.

BY MR. THOMSON: (Through interpreter).

Q Can I rephrase that, your Honor?

Was Mr. Lottinger anywhere near the well?

A There was a Mr. Pierce, Mr. Paul, a Mr. Thibodeaux and Horace on the well.

Q By "Mr. Pierce," do you mean Mr. Peters?

A I call him Mr. Pierce.

Q Was that The Texas Company boss?

A Horace was the boss--the boss of this. He was the boss over Horace and over all of operation.

Q What did your brother do just before the explosion, the accident?

A He spoke for a while then he came aboard the boat. He took a wrench and it busted.

Q Did the wrench come from the Mary Virginia?

A Yes, from the boat near where I was.

Q Was the wrench a part of the tools of this boat, the Mary Virginia?

A It was in a box especially separate on the deck of the boat.

Q Did your brother, Horace, use those tools whenever he wanted to or needed to?

A Yes, everytime he needed them.

Q Were those tools also used on the boat engine?

A Not I never.

Q Did anyone else use those tools on the boat engine?

A I don't think so.

Q What did your brother, Horace, do with the wrench after he got it off the boat?

A He went on the well to do something--I don't know what--to open a valve, and then it happened--or close.

Q Did you hear anything?

A I didn't hear any speaking. I heard the explosion.

Q What happened to your brother's body after the explosion?

A He was hit and he went into the lake.

Q Did his body come to the surface?

A No, it went to the bottom. The blood came up to the surface. Sank immediately.

Q Tell us from who, if anybody, you took your orders on this boat as far as navigating the boat, where and when it would go?

A I took my orders from Horace, me.

Q Tell us whether or not you have ever seen your brother Horace tie up the boat?

A Sometimes, every once in a while.

Q How did you get your job on the Marh Virginia?

MR. CARRERE:

If your Honor please, I object to that unless he tells for whom he was working.

THE COURT:

We will come to that next. You can ask him that question.

I overrule that objection.

THE WITNESS:

Horace came to talk to me to go on the boat.

BY MR. THOMSON: (Through interpreter)

Q Did you ever take orders on the boat from anyone besides your brother, Horace?

A Sometimes he left the boat after the job was done. Sometimes Horace would leave the boat and go on stand-by. Horace would work or he would be on stand-by.

Q While Horace was on the boat, however, did you take your orders from him?

MR. CARRERE:

I object to that as leading.

THE COURT:

He has already testified that Horace was the one that gave him his orders when Horace was on the boat. That is the court's understanding.

THE THOMSON:

I will withdraw the question

BY MR. THOMAS: (Through interpreter)

Q On an average day, how long would your brother, Horace,

stay on the boat?

A He would come in the morning and we would go in the afternoon.

Q From the time that he came and the time that he left, was he on the boat Mary Virginia most of the time?

A He came aboard. He told me where to go.

Q Where did your brother eat his lunch?

A Aboard.

MR. THOMSON:

That is all the questions I have.

CROSS EXAMINATION

BY MR. CARRERE: (Through interpreter).

Q Before his brother had the accident did he not leave the boat to go on a fixed platform?

A The boat tied up and he went on the platform.

Q Please describe the platform.

THE INTERPRETER:

He doesn't understand the question.

BY MR. CARRERE: (Through interpreter.)

Q Was the platform built of wood?

A Yes, sir.

Q Was it on piles driven down into the bottom?

A On piles.

Q About how many piles did it have?

A I don't know.

Q Can you tell us about how many?

A About four on each side.

Q. Was it stationary and permanent?

A The platform was on the water but stuck in the ground.

Q And all of the pilings were stuck in the ground?

A Yes.

Q Was his brother on that platform when the accident happened?

A Yes.

Q What was he doing on that platform?

A He doing something, opening a valve or closing it--I don't know.

Q Did that opening the valve have anything to do with the operation of this boat?

MR. THOMSON:

We object.

THE COURT:

I sustain the objection.

MR. CARRERE:

Would your Honor hear us on that?

THE COURT:

The valve had something to do with the Christmas tree or oil well, isn't that it?

MR. CARRERE:

That is what I wanted to establish.

THE COURT:

Whether or not that had anything to do with the boat is a question for the jury, under the facts in the case.

MR. CARRERE:

I would like to note my objection, may it please the court.

THE COURT:

It is overruled.

BY MR. CARRERE: (Through interpreter).

Q What type of work did your brother do for The Texas Company?

A He worked on the wells.

Q What did he do on the wells?

A He was a gauger, and he worked on the pipes.

Q Did he scrape parafin?

A Yes.

Q How many hours a day did he work normally?

A It looked to be eight hours.

Q Now, in an eight hour day how many hours would he scrape parafin?

A I don't know. I did not mark it. He would come and go.

Q Did his brother also paint and maintain the equipment on these wells?

A One time I saw him paint, one time.

Q Did he see his brother change valves and regulate valves on the well?

A No, not that. I didn't see that. Just open, close, and gauge.

Q At the particular well site, Number Twenty, where his brother was killed, was he taking on any fuel onto his vessel

or was the pipe-line that we are speaking about, the gas pipe-line, did it have any connection with the vessel in so far as he knows?

A No.

Q What time did his brother get aboard the Virginia, or Mary Virginia on the morning of the accident?

A About 8:00 o'clock.

Q And who told him where to go?

A He spoke to a pumper before coming aboard.

Q Who told the witness where to go on that morning?

A Horace.

Q Who started the engine?

A Me.

Q Who got in the boat?

A Me.

Q Where did he tell him to go?

A A well-I don't know which one. A well, sure.

Q Did he pilot the boat to that well?

A Yes.

Q What type of work was done at that well, if any?

A Scrape the well.

Q Did that particular well have a platform too?

A Yes, they all were alike with platforms.

Q And Horace got up on the platform to do his work there?

THE INTERPRETER:

He says, "where, well number 30?"

BY MR. CARRERE: (Through interpreter)

Q No, the first well he went to that morning?

A Yes, he climbed up to scrape.

Q Does he mean by that he climbed up to the platform?

A Yes, he had to climb, screw tip.

Q Approximately how long did Horace and his co-workers stay at that platform?

A It varies from time to time. He watches, and it varies.

Q Does he have any recollection as to how long they remained at the first stop on the morning of the accident?

A I don't know.

Q Would he say whether it was an hour or two hours?

A About one hour.

Q After that, what happened?

A We went to one and then the next, then all over.

Q Who told him where to go?

A Horace.

Q And who piloted the boat?

A Me.

Q Did he know where to go after he was told?

A Sometimes, but I would wait for him to say.

Q I mean by that, Mr. Witness, did you know where the well was located if Horace told him to go to a certain well?

A Not all-some of them.

Q In other words, generally if they told him to go to a certain well, he would just go there?

MR. THOMSON:

I object to that.

MR. CARRERE:

He is under cross-examination.

MR. COLEMAN:

That is not what he testified.

THE COURT:

It is overruled.

Ask him the question.

(The interpreter repeated the last question.)

THE WITNESS:

Yes. Oh, yes. If the pumper would know where to go. he would say go there and go here.

BY MR. CARRERE: (Through interpreter)

Q Then he would go where he was told?

A Yes, all over.

Q And in going from place to place, who started the motor as the occasion may require?

A Me.

Q Who would pilot and steer the boat from one place to another?

A Me. There was another one with me, but I was there.

Q Who was the other one with you?

A Paul Badeaux.

THE INTERPRETER:

He says, "The other man who worked on the boat, Gilbert Matherne, before he would come for two days and then he would go."

BY MR. CARRERE:(Through interpreter)

Q Gilbert Matherne worked on the boat at all times when

he was down there?

A Two days he worked.

Q But on the two days that he was down there he worked on the boat all the time and didn't work on the wells?

A Yes.

Q And Matherne did not work on the wells?

A I didn't see him. I didn't see him.

Q And his brother, Horace, did not work on the boat?

A Horace, he worked on the wells. He would start the engines for the well.

Q Now, when he says "the engines for the wells," just so there will be no mistake, that has nothing to do with the boat angle?

A No, not that. Not Horace, no. That work on the well, that.

Q Mr. Guidry, how were you paid?

A $240.00.

Q $240.00 per month?

A Month, yes.

Q Paid monthly?

A Yes.

Q Who paid them?

A Horace would go to get the check somewhere, and he would bring it to me.

Q Who signed the check?

A I think it is Mr. Kennedy.

Q Who is Mr. Kennedy?

A He is in the city somewhere--I don't know.

Q Did Mr. Kennedy own the boat?

A I think so.

Q Did he recognize the boat as being Mr. Kennedy's boat?

A Yes, Horace told me that. Horace told me he was working for Mr. Kennedy.

THE COURT:

Told him the boat was Mr. Kennedy's?

MR. CARRERE:

I am asking that as the next question, your Honor.

BY MR. CARRERE: (Through interpreter.)

Q And Horace told him he was working for Mr. Kennedy?

A Said me and Horace worked for the company, the boat company.

Q The boat company?

A The boat company.

Q Ask him if the boat was licensed?

A Not me. I don't know.

Q You had no license papers aboard it?

A Yes, it had papers. I didn't read them.

Q How long was he aboard the towboat?

A Seven months.

Q How long have you been operating boats down in South Louisiana?

A Oh, very long.

Q And don't you know, as a matter of fact, that the boats have to have a license?

A I know that, but I don't know anything about that. I never pay attention to that. I just go all over, go fishing.

Q You never have been questioned by the Coast Guard about a license?

A No, not me.

Q And he didn't take the trouble to look at this license during the six or seven months that he was aboard the vessel?

A No.

Q I take it that he is no longer operating a boat?

A No, I can't.

Q Is that because of his illness?

A Yes.

Q When did he stop operating the Mary Virginia?

A On the fourth of February in 1953.

Q Did he stop voluntarily?

A I went over there and quit.

Q Why did he quit?

THE INTERPRETER:

He said, "I went and operated another boat."

BY MR. CARRERE: (Through interpreter).

Q At the time that he quit who owned the Mary Virginia?

A Mr. Kennedy. He was the boss.

Q And he just quit?

A Yes, I quit. I saw the accident and I quit.

MR. CARRERE:

I have no further questions.

REDIRECT EXAMINATION

BY MR. THOMSON:(Through interpreter)

Q Who did you tell that you were going to quit?

A The boss, Mr. Riche, and Mr. Kennedy I told.

Q Does Mr. Riche work for The Texas Company?

A Yes, pumper. He had the short leg.

Q How many wells were there in Lake Salvador?

A I think there were thirty-two, I think, when I was over there.

Q Did you have occasion to use the Mary Virginia to go to each one of those wells during your seven months?

A Whenever Horace had to go, we would go.

Q Was the Mary Virginia used for anything else other than the parafin scraping jobs on these wells?

A That is what we would do, or else we would tie up and stand by.

Q Do you know the location of the thirty-two wells? You testified that you knew some of them. How many of the thirty-two wells would you say that you would know the location of if I gave you a number?

A Several by the numbers. (Indicating with hand.)

MR. CARRERE:

Mr. Deramee, at one time in his conversation didn't he say they would point to the well they would want to go?

THE INTERPRETER:

He was pointing to the number, "par le nombre," he said by the number.

MR. CARRERE:

Thank you.

BY MR. THOMSON: (Through interpreter.)

Q If you didn't know the location of the well, who would you ask where that well was located in order to get the boat over there?

A Horace would tell me, and the pumper, another fellow. Horace would tell me, and the pumper would tell Horace where to go.

Q Was the pumper on the boat?

A No.

Q Who did the pumper work for? Was he for The Texas Company?

A Texas.

Q In addition to the parafin scrapers, was there ever any additional men on board the Mary Virginia?

A There was.

THE INTERPRETER:

And he mentions a name that I don't get.

MR. CARRERE:

Is it Hatty?

THE WITNESS:

On the boat there were three, Paul, Horace, and myself. On the platform there were two, Thobodeaux and another man.

BY MR. THOMSON: (Through interpreter.)

Q Has Matherne ever been on the boat at the same time you were?

A He would come for two days before the accident.

Q Did Gilbert Matherne ever work on the boat when you were

on the boat?

A Just two days, two days. He was just like me, but he would work for two days.

Q Did he relieve you on board the Mary Virginia?

A Yes.

Q So when Matherne was on board the boat you were not on the boat?

A We would rotate in two days. He would come and I would go, and when I would finish he would come.

Q On the day of the accident as far as tying up the boat as you went from well to well, you would have to call either Badeaux or your brother, Horace, to tie up the boat, isn't that correct?

MR. CARRERE:

I object to that as leading.

THE COURT:

Rephrase your question.

BY MR. THOMSON: (Through interpreter.)

Q Would you state whether or not on the date of the accident you had to call upon either Badeaux or your brother, Horace, to tie up the boat as it came to the particular well?

MR. CARRERE:

I object to that as leading.

THE COURT:

That objection is sustained.

Who tied up the boat at the various wells on the day of the accident?

THE WITNESS:

Paul.

THE COURT:

Anybody else?

THE WITNESS:

Horace, and sometimes me.

BY MR. THOMSON: (Through interpreter.)

Q Sometimes you tied up the boat?

A The day of the accident, there was me, Horace, and Paul aboard.

Q When you tied up the boat who would be piloting or operating the boat?

A Gilbert, for two days.

Q For two days Gilbert would operate the boat and you would tie the boat up, is that your testimony?

A Yes.

MR. THOMSON:

That is all. I have no further questions.

RECROSS EXAMINATION

BY MR. CARRERE: (Through interpreter.)

Q Ask him if he remembers having a James Hatty on the boat from time to time?

A Before Paul, yes.

Q How about a Mr. Coulon?

A I don't know, me.

Q What would Horace Guidry, James Hatty, and Badeaux do while the boat was going from one well location to the other?

A. They would wait.

Q Would they be sitting down doing nothing?

A I don't know. I didn't see that. I was below sometimes.

Q Where would they be while he was operating the boat from one location to the other?

A They were on the deck waiting to go to the well.

Q And they did nothing else other than to wait to get to the well?

A Yes. they would wait. When we would arrive, they would work on the well.

MR. CARRERE:

I have no further questions.

REDIRECT EXAMINATION

BY MR. THOMSON: (Through interpreter.)

Q What were the duties of Mr. Matherne on the boat when he was working on the boat with you?

A He would tie up and work with me, doing everything.

Q Was Matherne on the boat the day of the accident?

A No. Oh, no.

MR. THOMSON:

That is all.

MR. CARRERE:

No questions.

THE COURT:

We are going to recess right now until fifteen minutes after one.

(Whereupon, court recessed.)

AFTERNOON SESSION

THE COURT:

You may proceed. Call your witness.

MR. COLEMAN:

We would like to call Gilbert Matherne.

Mr. Matherne doesn't seem to be here, so we will go on with Mr. Porter.

LYMAN PORTER

called as a witness at the instance of the Plaintiff, having been duly sworn, was examined and testified as follows:

MR. COLEMAN:

If your Honor please, Mr. Porter is being called as an adverse witness under the Rule.

MR. CARRERE:

If your Honor please, we object to that. Mr. Porter is neither adverse at this particular time, nor is he of a character of employee that would be permitted under the Rule for cross-examination.

THE COURT:

What is your employment? What are your duties with The Texas Company?

THE WITNESS:

I am district superintendent of the Harvey District at the present time.

THE COURT:

You say district superintendent?

THE WITNESS:

Of the Harvey District, at this time.

THE COURT:

What were you at the time of this accident?

THE WITNESS:

I was assistant district superintendent.

THE COURT:

What are the duties of the assistant?

THE WITNESS:

Well, I assist the District Superintendent.

THE COURT:

Well, what did the District Superintendent do?

THE WITNESS:

Well, in the drilling and production, we make different-- we give orders to drilling wells, and the production.

THE COURT:

And your answer is that you were as assistant at the time, is that correct?

THE WITNESS:

That is correct.

THE COURT:

If you are calling him as a witness, you will have to call him as your own witness.

MR. COLEMAN:

If your Honor please, the supervisor is not in this country. He was the only man that would be directly under him, so we cannot get in touch with him. He was completely in charge of the field and in charge of all of the employees under him.

THE COURT:

If his hostility is demonstrated, then it will be a

different situation, but at the present time proceed with him as your own witness.

MR. COLEMAN:

All right.

DIRECT EXAMINATION

BY MR. COLEMAN:

Q Mr. Porter, you work for The Texas Company?

A That is correct.

Q How long have you been working for them?

A Close to twenty-one years.

Q In what capacities have you worked for The Texas Company?

A Well, I have worked, when I started out, pumping water and roughneck driller, drilling and production foreman, and assistant drilling superintendent, and now I am district superintendent.

Q Is Lake Salvador in your present district?

A That is correct.

Q I show you some pictures marked Guidry-9 through 12, and ask you if you recognize these pictures as part of Lake Salvador, in your district? (Photographs to witness.)

A Yes, this is part.

Q On this Guidry Exhibit-11, the witness says this is part.

A Yes, this is part.

Q Now, on Guidry Exhibit-10, the witness has also said that this is part.

A Yes, this is part.

Q And on Guidry Exhibit-9 the same?

A That's right.

Q And on Guidry Exhibit-12 the same thing?

A Yes, this is part.

Q Were you ever ordered by The Texas Company to make any investigation of an accident that resulted in the death of a man by the name of Guidry?

A How's that?

Q I said were you ever order by The Texas Company or any of its officials to make an investigation of an accident that resulted in the death of a man named Guidry?

A The day after, Mr. O'Brien --

Q Who is Mr. O'Brien?

A He was the district superintendent.

Q So what did you do?

A Well, I went to the place of the accident the day after.

Q The place where Guidry was killed?

A That is right.

Q Did you have an opportunity to investigate the physical surroundings of the accident after the accident occurred?

A That is right.

Q What did you see when you arrived out at the platform and made an investigation of the physical surroundings?

A Well, we saw the platform, the well, and where we have a Christmas tree--

Q The Christmas tree was still standing?

A Yes, that is part of the well.

Q And besides the Christmas tree, was there anything else

still standing above the platform?

A There was one foot, approximately one foot of the riser on the gas riser.

Q Will you explain to the jury what you mean by the word "riser"?

A In this particular place it is a two inch line that extended through the platform about one foot above, and the Christmas tree is part of the well, the well head, that is what we call the Christmas tree.

Q I show you a photostat of a map with the heading "Texas Company" on it, and marked Guidry-11, and ask if this map was prepared by you or in association with you during your investigation? (Document to witness.)

A This wasn't prepared by me.

Q Have you ever seen this map before?

A Yes, I have seen the map.

MR. CARRERE:

I have no objection to its use, your Honor.

THE COURT:

What is that map? Tell us what it is.

MR. COLEMAN:

This map, if your Honor please, is a description of the riser and the ell that was connected to the riser off the platform.

THE COURT:

Let the witness explain it to the jury.

BY MR. COLEMAN:

Q Will you explain to the jury, and if you want to show it to them, you can, while explaining it.

THE COURT:

Step down and explain it to them.

THE WITNESS:

According to this drawing, this is a riser that comes up out of the water, and this is supposed to be the platform (indicating on map), the decking of the platform. And, well, the date that we went out there, all this--I just saw up to this (indicating). That is exactly what I saw. This is above the platform right here (indicating).

BY MR. COLEMAN:

Q Now, connected to the riser, there is a notation marked here, "connection parted here," (indicating on chart) and what was connected right there? Was there an elbow, or will you explain to the jury what was the connection?

A Now, when I went out there I didn't see the ell. It was supposed to have been an ell on the riser right there (indicating on chart), right here, but the day I went out the elbow had gone--I mean it blew off.

Q Well, how was the elbow connected to the riser?

A It was screwed.

Q Screwed on threads?

A That is right.

Q Did you have an opportunity to examine the threads above the platform after the accident?

A Yes, we did.

Q Will you now just tell the jury what you found as a result of your personal examination of those threads?

MR. CARRERE:

If he has finished explaining the exhibit, your Honor I ask that he take the witness stand again.

THE COURT:

Just sit down.

BY MR. COLEMAN:

Q What did you find on the threads?

A We found on the threads where the ell--

MR. CARRERE:

I object to the witness testifying what "we" found. I think it should be limited to what he, himself saw.

THE COURT:

Yes, what you saw.

THE WITNESS:

I found on the threads where the ell had stripped off, had blown off.

BY MR. COLEMAN:

Q And as a result of your prior knowledge and your twenty-one years with The Texas Oil Company in working with pipes, what was your opinion as to these threads that you saw?

MR. CARRERE:

I object to this witness giving opinion testimony as to what caused an explosion or parting of a pipe by just looking at the pipe subsequently after. There hasn't been any foundation showing he is an expert in any way, shape, or form in that

respect.

THE COURT:

Suppose you lay a better foundation for your question.

BY MR. COLEMAN:

Q What was the work that you did with The Texas Company during your twenty-one years? Did you do much work with pipes?

A Sometimes.

Q What work did you do with them from the beginning, from your beginning experience as a roughneck, during your twenty-one years?

A Well, we handled drill pipes, which is entirely different. We had different threads on the pipe, but we did do connection work around the rig.

Q Do you feel you are pretty familiar with connection work with pipes, when pipes are connected and the threads that connect pipe?

A Well, I have connected pipes.

Q In other words, where as Supervisor can you check whether or not pipe is threaded properly?

A Yes, I think I am.

Q Was this pipe threaded properly?

MR. CARRERE:

If your Honor please, this again is a matter of opinion. If Counsel is trying to use him as an expert, I would like to have the opportunity to cross-examine him.

THE COURT:

Well, I think the witness is about as good as you are

going to be able to get on this question of threading pipe. He, obviously, has had a great amount of experience.

After you saw this pipe and the elbow had blown off, did you come to an opinion as to what made it blow off?

THE WITNESS:

My opinion--I don't know if he was trying to open the valve, and the pipe must not have been leaking when he went there, but when--if he jerked on the valve, the threads that I saw on the pipe must have given way, and that is what happened.

THE COURT:

All right, sir.

BY MR. COLEMAN:

Q Then you felt that the accident was caused by the thread giving way, is that correct?

MR. CARRERE:

Excuse me, your Honor. May I have it understood that this testimony is given under my objection, generally?

THE COURT:

Let the record show that all the opinion testimony by the witness with reference to the cause of the accident is over the objection of Defendant Counsel.

Proceed.

THE WITNESS:

Well, with him fooling with that valve, I think the threads, they gave way. There must have been bad threads on the pipe if they gave way with just a jerk on the valve.

BY MR. COLEMAN:

Q You discussed the accident, and you came down to the

fact that the cause of the accident were the threads giving away, isn't that correct?

A That is my opinion.

Q Was Guidry fooling with the valve?

MR. CARRERE:

If your Honor please, this witness was not there.

THE COURT:

I sustain the objection.

Let's proceed.

BY MR. COLEMAN:

Q As far as your testimony that the witness was fooling with the valve, you have no knowledge of that, isn't that right? You don't know anything about any witness fooling with any valve, do you?

A Well, after the investigation.

Q You say after the investigation--

THE COURT:

Somebody told him that was what happened.

BY MR. COLEMAN:

Q Somebody told you, and you don't know if he fooled with the valve?

A I don't know if he was fooling with the valve.

Q All you know is that you saw those threads, isn't that right?

A That is right.

Q And as a result of actually seeing the threads you came to the conclusion that the threads caused that explosion, isn't

that correct?

A No, with the amount of threads on there without anybody fooling with it, they could still be there.

Q Well, what do you meay by "fooling with it"? Did anybody fool with the threads, is that what you say?

A No, above the threads.

Q You mean if anybody had opened the valve?

A Or tried to open it.

Q Is it normal when someone opens or tries to open a valve that the threads let loose?

A Well, no. That is my opinion of it.

Q You have to come back down to the conclusion that something was wrong with the threads, and that is what caused this explosion, isn't that right?

A That is my opinion.

MR. COLEMAN:

That is all. Thank you.

MR. CARRERE:

I want to cross-examine.

CROSS-EXAMINATION

BY MR. CARRERE:

Q Mr. Porter, would you tell us the nature of the platform at this location?

A Well, it has eight pilings, and it is about, I would say six feet above the water.

Q Are those pilings permanently driven into the ground?

A That is right.

Q And when I say ground I mean the bottom?

A That is right.

Q What kind of planking is the platform made out of, to your knowledge?

A We put sills on top of the piling and then on top of the sills we put, I believe, that these were two by twelves, or two by tens.

Q Is that a substantial platform?

A It is.

Q It is not designed to be moved from one location to another like a submersible drilling barge, is it?

A No, sir.

Q Its permanent location is where the piling are driven in?

A That is right.

Q Its permanent location are where the piles are driven?

A That is right.

Q What is this Christmas tree that you have on the platform?

A That is on the well. That is the well itself.

Q You say the well itself?

A That is right.

Q And tell the jury what the purpose of the Christmas tree is?

A The purpose of the Christmas tree is we have valves to close the well in, and well, it is a flow line going from the well to the tank, and on top of the Christmas tree, why, we have a union that we can put a lubricator over, and do any kind of-- any kind of water line work inside the tubing in the well.

Q And you say that there was a riser sticking one foot above the platform, and you showed the jury what the riser was, and you indicated it was a two inch pipe?

A Yes, sir.

Q What was the nature of that pipe?

A That was tubing, two inch tubing.

Q Had that any connection with the well?

A Not at that time, no.

Q What was its purpose?

A It was furnishing either fuel for running a rig, or sometimes we gas-lift. It was tied to the well sometimes.

Q And this pipe would run along the bottom from the lease to this particular location?

A That is correct.

Q And it was actualy for carrying either gas or crude oil as a fuel, is that so?

A No, no crude oil; just gas.

Q Just gas?

A Just gas.

Q Had you on any occasion seen this pipe which is the subject of this investigation, this case here today, prior to the accident?

A Will you repeat that question?

Q I am just wondering if you had seen this pipe with the ell in it prior to the accident?

A No.

Q You had never been to this particular location prior to the accident?

A Not to my knowledge, no.

Q Now, you said that subsequent to the accident--if your Honor please, with reference to any questions I may ask him regarding what he has given as opinion in this case, I would like to do it subject to my prior objection, if your Honor doesn't mind. It is before the jury, and I would like to have an opportunity to explore it.

THE COURT:

It will be so understood.

BY MR. CARRERE:

Q When you went out to investigate the accident, actually, all that you saw was an upright riser, isn't that so?

A That is right.

Q And you saw some threads on that upright, didn't you?

A That is right.

Q And state whether or not those threads were damaged by the effect of the balance of the other gadgets coming off?

A Yes, the threads were damaged.

Q Now, are you in the position to testify definitely that that pipe did not part on the riser itself, or is it a matter of opinion?

A That is my opinion, that it did not part.

Q As a matter of opinion you stated that the pipe could have held if some intervening force, such as somebody pulling on the valve, had not taken place, is that right?

A That is exactly right.

Q And that is again a matter of opinion?

A That is a matter of my opinion.

Q For the purpose of our education as laymen, what is scraping parafin from a well?

A Well, over a period--do you want me to tell them exactly?

THE COURT:

Just explain.

BY MR. CARRERE:

Q Just tell us as simply as you can what scraping parafin is?

A Over a period of days parafin accumulates on the inner wall of the tubing that the fluid oil comes out, and different wells, we have to scrape them according to their parafin. Some of them we scrape every two days, and some of them every week, and the idea is we scrape it with a scraper. We put a lubricant on top of the Christmas tree in order to hold the pressure. and then we go down inside the well with a little scraper to the depth of the parafin, which runs from one hundred feet to two thousand feet, or maybe deeper sometimes, to get this accumulation off the walls of the tubing to keep from parafining up.

Q All of that is done down in the well casing, is it not?

A That is right.

Q Now, what does checking chokes and pressures at wells, done by a roustabout, consist of?

A Checking chokes is still on the Christmas tree.

Q What is that?

A That is the top part of the well.

Q What is the purpose of checking chokes?

A Checking chokes is to see if a choke is cut out by sand,

or if it is stopped up or parafined up.

Q And that is merely to determine, to check to see if there is an abundance of parafin, and if there is you can go in and scrape it out, is that so?

A No, we change the choke. I mean we clean the choke, but it doesn't tell us when to scrape the well. That is just checking the choke.

Q And that is another function of the roustabout in his usual checking and maintenance of these particular locations, is that not so?

A That is right.

Q And what does a roustabout do when he checks pressure?

A He checks pressure. We have a gauge for--he may run a gauge in his boat that he puts on top of the well, on the Christmas tree, and checks the gauge. I mean he checks the pressure on the well.

Q What is the purpose of doing that?

A Well, that way why, we can tell whether the well is going dead or whether it is logging up, or the condition of the well. That is the purpose of it.

Q That is for checking the productivity, isn't it?

A That is right.

Q Now, with reference to this particular field, if you sent one of your roustabouts to clean and paint at the lease, what do you mean by that?

A Well, we mean, when cleaning and painting at a lease, it is different things, that is, lines and tanks. Well, as far as

that goes, Christmas trees, and we paint everything above the water.

Q When you say "at the lease", in that particular area where did you refer to?

A Any part of the wells or tank battery,or at any--

Q You have tank batteries at the stations that you build I assume, to take the petroleum products for storage after they are produced, is that not so?

A Yes, the petroleum goes from the well to the tank battery.

Q And you say that you are in what capacity for The Texas Company at the present time?

A I am district superintendent, drilling and production Harvey.

Q At the time of this accident, you were in what capacity?

A I was assistant district superintendent.

Q In that capacity, did you have cognizance of the activities of your roustabouts at Lake Salvador?

A No, I didn't deal with the roustabouts. I dealt through the foreman.

Q Who was the foreman at that time?

A Mr. Lottinger

Q Do you know what they were supposed to do from the matter of your policy?

A The roustabouts?

Q Yes?

A I know what the roustabouts were supposed to do on the lease.

Q What are they supposed to do?

A They are supposed to maintain the lease by painting and do any kind of connection work on the tank battery or well, and lay new pipe-lines, and also scraping parafin.

Q Did your roustabouts on that lease operate boats?

A No.

Q Were they employed to operate boats?

A No, sir.

MR. COLEMAN:

I object to what other roustabouts do. The only issue before us is what this man did, and whether he was working with boats.

THE COURT:

The objection is overruled.

BY MR. CARRERE:

Q And did Mr. Guidry, the decedent, operate a boat for The Texas Company?

A Not to my knowledge, no, he was not supposed to operate a boat.

MR. COLEMAN:

I object, unless the witness knows of his own knowledge.

THE COURT

You must stand up in this court if you want to object.

MR. COLEMAN:

I object to the witness' statement about what Mr. Guidry did, because he has already testified he didn't know anything about what his roustabouts were doing, and that they were under the foreman, and unless he knows of his own personal knowledge

whether Mr. Guidry operated or worked with boats, I object.

THE COURT:

As I understand the witness' testimony at this point, he is giving the general custom and practice of roustabouts for The Texas Company on this lease, and that he is not speaking in particular about the decedent, Mr. Guidry.

On that basis I overrule the objection.

BY MR. CARRERE:

Q Are you familiar in your capacity with the fact that The Texas Company at the time of this accident took cognizance that these men would have to travel to the various locations of these wells, and paid them travel time?

A Yes, we paid them travel time.

Q To and from work?

A Yes.

Q And state whether or not you know that the travel time was at the basis of seventy-five cents an hour rather than their normal pay?

A That is the minimum rate, that is right.

Q That is what they paid?

A That is right.

Q What is that supposed to cover?

A That is the boat ride from where they get on the boat to where they are going to work--from the headquarters out there to where they go to work.

MR. CARRERE:

I have no further questions.

REDIRECT EXAMINATION

BY MR. COLEMAN:

Q Did you make an investigation as to the use of the line where the explosion was caused? Do you know what the line had been used for?

A . We did not that day.

Q At any day, didn't you testify that the line had been used for gas and not oil?

A The line was used for gas.

Q And you know that is all that it was used for?

A To my knowledge.

Q When was the last time it was used prior to this explosion?

A That is something I don't know.

Q Had it been used for a year prior to the explosion?

A I don't know.

Q. This line wasn't connected at all to the well, was it? To the well itself?

A I didn't see the line before it was off, so that was all I had to go by, that was what the men in the field told me.

Q From your investigation and discussing with all those that actually saw the line, you know it was not connected to the well, is that right?

A That was my opinion at that time.

Q And the opinion arrived from what?

A The conversations I had with the personnel in the field.

MR. CARRERE:

If Mr. Coleman is attemptint to establish that as a fact, I will admit it was not connected to the well.

MR. COLEMAN:

I want the witness to admit it too.

THE COURT:

Let's proceed.

In other words, Counsel for The Texas Company says, Mr. Porter, that this line on which the explosion was, was not connected to the Christmas tree?

THE WITNESS:

That is right. At the Christmas tree I didn't see it, but that is what the personnel said.

THE COURT:

As far as you know, you don't know what it was used for except gas, and you don't know when it was used for gas, is that right?

THE WITNESS:

No, I don't know when it was used last for gas. It was a gas line.

BY MR. COLEMAN:

Q If it was used for gas, what would it have to be connected with?

A It would have to be connected to our gas system.

Q What would it have to be connected with on the platform?

A It wouldn't have to be connected to anything.

Q What would be the purpose of putting gas through the system to the platform?

A To either run a work-over rig, or well-tight a work-over rig, or to be used as gas lifting a well.

Q Or to be used for what?

A Gas lifting a well, you know, a well.

Q You were the assistant supervisor of this whole field, weren't you?

A I was the assistant district superintendent of the district.

Q You would know when a work-over rig came on any platform on this particular well, wouldn't you?

A That is correct.

Q There hasn't been any on there for years prior to the time of the explosion, was there?

A I didn't check that out.

Q When, to your knowledge, was the last time they had a work-over rig on that platform connected to this pipe?

A Truthfully I wouldn't know, because sometimes we have wells that go ten years without--

Q Isn't it correct that this line hadn't been used for over a year, and didn't you find that out as a result of your investigation?

A I don't think we pinned that down.

Q Did you pin down if it was eleven months or anywhere close to that time?

A No, I don't think we did.

Q Did you try at all to do that?

A I'm sure we did.

Q As a result of your investigation and talking directly to the witnesses, and being on the scene the day afterward, did you ascertain from either your foreman or from anyone else why this valve on this line was being opened, or was being--I think the word you used for having handled it at all, "fooled with?"

A You want to know why?

Q Yes?

A We were trying to check the pressure on the line.

Q So the purpose was to check the pressure on this particular line, and it has nothing to do with checking the pressure on an oil well?

A No, sir.

Q Why didn't you just check the pressure gauge?

A According to information there was no gauge.

Q If there had been a gauge there would it have been necessary to do anything more than just to read the pressure gauge if you wanted to check the pressure?

A Well, I'll tell you, sometimes--

MR. COLEMAN:

If your Honor please, may I ask the witness be instructed to answer our question and then explain it?

THE COURT:

Let's give him a chance to answer on his own.

Do you understand the question?

THE WITNESS:

Yes, I understood the question.

THE COURT:

Suppose you try to answer it.

THE WITNESS:

Sometimes we put the pressure gauge back of the valve, so that if--I mean the gauge is blown off or knocked off, it wouldn't -- you might be a good distance from another valve to close off, and if we had a gauge on that we might have had to open the valve. I don't mean a big valve; I mean a smaller valve of some kind.

BY MR. COLEMAN:

Q Isn't it true there is no "might" about it at all, and if the gauge had been there you would not have had to open the valve?

A This particular valve I would say yes.

Q Have you bought much equipment for The Texas Company?

A I have ordered some equipment.

Q How much does a gauge cost?

A Offhand I wouldn't know because on that, sometimes you think it doesn't cost much when it actually costs a good bit.

Q Does it cost over or under fifty dollars?

MR. CARRERE:

I object to this as being irrelevant and immaterial.

THE COURT:

Do you know whether it costs about one hundred dollars, one hundred and fifty dollars? Do you know?

THE WITNESS:

Offhand I wouldn't know.

THE COURT:

The witness said he doesn't know.

Let's proceed to something else.

MR. CARRERE:

If your Honor please, Counsel for the Plaintiff has a sketch which has been drawn by someone at his disposal, and I have no objection to the use of it provided if it is definitely understood that this is not a scale, and it is merely the impression of what was on the particular location.

THE COURT:

The jury will so understand.

Let's proceed.

BY MR. COLEMAN:

Q I show you this sketch which Mr. Carrere has explained, and ask you if it is pretty much--if it pretty much shows the impression of the platform and the oil well, and the separation between the Christmas tree and the gas line? (Document to witness.)

A Yes, offhand--I mean it is kind of crudely drawn. The Christmas tree and everything is not--

Q Not to scale?

A That is right, it is not exactly right.

MR. COLEMAN:

In connection with the witness' testimony, I wish to offer and introduce it in evidence with the qualifications as suggested by Mr. Carrere, and I mark it Guidry-16.

May I show it to the jury, your Honor?

THE COURT:

Yes, show it to the jury.

(Whereupon, the document above referred to, marked Guidry-16 for identification, was received in evidence.)

BY MR. COLEMAN:

Q Were the pipe-lines that you investigated, the gas pipe-lines, owned by The Texas Company?

MR. CARRERE:

We admit that line that was above the riser was owned by The Texas Company, depicted by the riser.

BY MR. COLEMAN:

Q Are you familiar with the tug, the vessel Mary Virginia?

A No.

Q Do you have anything to do with any of the boats that are operating in this lake?

A ~~It was~~ all under Mr. O'Brien's supervision at that time.

Q As an assistant did you have anything to do with the boats?

A Yes, it was all under our supervision.

Q Had you ever been on the Mary Virginia?

A Not to my knowledge.

Q Have you ever seen it?

A I guess I have seen it. I can't pick it out, I mean. I mean I've glanced at it.

Q Do you know, or did you know the deceased, Mr. Guidry?

A No.

Q You never saw him?

A I might have seen him, but I can't--I didn't actually know him.

Q You never specifically gave any instructions to him then?

A No.

Q You would have no way of knowing if he had or didn't have any duties, or performed any duties aboard the Mary Virginia, would you?

A No, I wouldn't know.

Q Did you, as his superintendent, ever tell him that he could not perform any duties to assist in the navigation of the Mary Virginia?

A I was not superintendent.

Q Well, as assistant superintendent, under Mr. O'Brien?

A No, I never did have the occasion to tell them--they all know that anyhow.

Q Did you ever instruct anyone under you to instruct Mr. Guidry not to perform any duties or help out whatsoever in the navigation or operation, or the tying up of the Mary Virginia?

A No, we never did have the occasion to tell anybody that.

Q Do you know that Mr. Guidry was on the Mary Virginia?

A I knew it after this accident.

Q Did you know how long a time he had been on the Mary Virginia prior to the accident?

A No.

Q Did you make any investigation of that from your records?

A No, I didn't. Some of us might have.

Q Is there any way to get to the well where parafin is

scraped in this particular lake without going in a boat?

A No.

Q How many wells are in Lake Salvador?

A Offhand I would say it is around thirty somewhat.

Q Who owned the well?

A The Texas Company.

Q How big a lake is Lake Salvador?

A I can't tell--I don't know. I don't know our lease out there, how many acres.

Q Well, have you got an approximate idea?

A No, I don't have an approximate idea.

Q Would you say that it would be wrong to say it was a lease over eight or nine miles wide?

A I don't know.

MR. CARRERE:

If your Honor please--

THE COURT:

Let's proceed.

BY MR. COLEMAN:

Q This parafin scraping, it is a continuing operation that you have to complete, or to go around from well to well in checking them?

A That is right.

Q Did you assign any specific boat to any specific well?

A I don't.

Q Does anyone under your jurisdiction from you have to go to a particular well in a particular boat?

A No particular boat.

Q Do you have a boat assigned to taking men around to handle the parafin scraping?

A Yes, some of them are used, mostly for parafin scraping.

Q What was the Mary Virginia being used for by The Texas Company?

A I believe it was used as a parafin scraping boat.

Q So the purpose of the Mary Virginia was to go from well to well, to bring men for parafin scraping, to check the wells, is that right?

A That is right.

MR. COLEMAN:

That is all.

RECROSS EXAMINATION

BY MR. CARRERE:

Q Mr. Porter, Counsel showed you this sketch which he marked Guidry-16, and he asked you if this was the way that that platform appeared to you when you went down there, and you said words to the effect that generally, but that there were some exceptions. What did you mean by that?

A I meant that the Christmas tree,that is not the way it is. We have valves on the bottom. The Christmas tree is on the well. We have more than one valve on the well. We have at least two more valves. Then, this portion in here (indicating) that, it is not drawn near like you would see it on the regular well.

Q Well, I assume that is correct, sir, but generally you do

have a Christmas tree, and if that indicates a rough position of the Christmas tree, you make no quarrel with it then?

A That is a rough position of a Christmas tree, yes.

Q And, of course, I assume when you say this riser which was involved in the accident, it had none of that equipment which is shown in the picture?

A No.

Q And do you know from your recollection if the platform was exactly as he has it here?

A No, as a general--it is just a platform there, but as far as that riser, I don't know if it came up exactly this distance from here (indicating). I can't recollect that.

Q Naturally, all you can say is that this is a general idea of the make-up of the platform and the equipment there was on, isn't that so?

A That is right.

Q When Counsel asked you if you knew that Mr. Guidry, meaning the deceased, was on this Mary Virginia, did you not mean that he was on it to go from well to well for the purpose of carrying out The Texas Company business at these well sites?

A I did not know Mr. Guidry was.

Q Now, you had no intention of implying that Mr. Guidry was a crew man on this boat, did you?

A Oh no, Mr. Guidry was not a crew man on the boat.

MR. CARRERE:

I have no further questions.

REDIRECT EXAMINATION

BY MR. COLEMAN:

Q Who was the crew man on the boat?

A I don't know.

Q How are you so positive he didn't perform any services as a crew man?

A He wasn't hired to be a crew man.

Q He wasn't hired by The Texas Company, is that right?

A That is right.

Q Did you hire him?

A No.

Q Did you have anything to do with his employment?

A No.

Q Well, how do you know what he was hired for?

A Well, that is our general practice.

Q You weren't present when he was hired, and you don't know what he had been specifically informed by whoever hired him as to what his duties were?

A No, I don't know.

Q You testified about different wages when the man was on a boat going out to the well, and a different wage when he was acting as a parafin scraper, is that correct?

A That is correct.

Q Is that from the time, the wages start from the time he leaves the landing on the lake until the time he gets to the first well, then he has a certain wage scale, is that right?

A Not necessarily the first well; that is to get out to Lake

Salvador from our warehouse at Valentine--it starts close to that--but that is his wage to get out there, and he does do his day's work and then to get back in, the other hour is to get back in.

Q So that the whole time he is on Lake Salvador, those wages are the same, isn't that correct?

A His regular duty hours are the same, yes.

Q Does this mean that if he gets on one well and worksfor a little while, say--well how long does it take to clean up a well out of parafin, about how long?

A Well, I would say approximately maybe an hour or an hour and a half.

Q When he finished that hour and a half, and he is leaving from that well to go to the next well, what are his wages?

A The same as if he was scraping a well.

Q He gets the same wages right along when he is on the boat as while he is on the well? There is no difference from it, is that correct?

A During that eight hours, that is.

THE COURT:

He gets an hour at seventy-five in the morning and an hour at seventy-five when he is going home, is that right?

THE WITNESS:

Yes, sir.

THE COURT:

Then, the rest of the day he is paid his regular wages as a scraper?

THE WITNESS:

That is right. Yes,whether he is riding a boat or--

THE COURT:

No matter what he is doing?

THE WITNESS:

That is right.

THE COURT:

Let's proceed.

BY MR. COLEMAN:

Q Did you the next day fish up the valve and the rest of the fittings that were blown off?

A No, we did not.

Q Did you try to?

A We tried--I didn't,but we had some men out there trying.

Q It was impossible to find it?

A We could not find the valve.

Q What is the normal crew on a boat of the type of the Mary Virginia?

A Two men.

MR. COLEMAN:

That is all.

MR. CARRERE:

I have no further questions.

I would like that he remain subject to call, because I don't know what else he could testify to at this time.

THE COURT:

Let him be excused subject to your call.

Mr. Knight is here if you want to use him.

MR. COLEMAN:

Your Honor, I want to apologize for not getting up.

THE COURT:

That is all right. It is just that we have rules here just a matter of practice.

NATHANIEL BUTLER KNIGHT: called as a witness at the instance of the Plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMSON:

Q Will you give your full name, sir?

A My name is Nathaniel Butler Knight, Junior.

Q What is your profession, Mr. Knight?

A Well, I am an attorney at law.

Q How long have you practiced?

A Since 1932.

Q Are you presently practicing law?

A I am.

Q Do you hold any official position with the State of Louisiana, or any subdivision.

A I am a member of the Louisiana Public Service Commission.

Q What position do you have on that commission?

A I am a member.

Q Did you know the late Horace Guidry, Mr. Knight?

A I did.

Q Was your acquaintance with him in a professional capacity

or personal capacity, or both?

A I knew him slightly on the personal basis before we became acquainted professionally, that is, before he asked me to do anything professionally for him. It was primarily a professional relationship.

Q Over what period of time did that relationship extend?

A Several years prior to his death. It began several years prior to his death and continued to his death.

Q On the basis of your acquaintance with Mr. Guidry do you have any personal knowledge of the care, attention, instructions, training, and advice and guidance which Mr. Guidry rendered to his children, his three children?

A Well, my knowledge of anything in that general vein came to me as attorney in connection with domestic trouble that he had, that he discussed with me.

Q Do you know if Mr. and Mrs. Guidry were separated at the time of his death.

A I think they were. They had been, and I just don't know whether they were, but I think they were reconciled from time to time, and I don't know just what the status was at that particular time.

Q Do you know where the children were living at the time of his death?

A Not exactly at that time, and I might explain that by saying that Mr. Guidry had come to me in connection with proposed divorce proceedings, and at that time I know that he and his wife were living separate and apart. Then, later, he came

to me and asked that I withhold any such action, that he had changed his mind, and he and his wife were attempting a reconciliation, and it has been several years, and I made no effort to refresh myself from my files prior to coming here. I don't remember the details as to just what the situation was prior to his death.

Q During the period of the estrangement, do you have any knowledge as to where the children were, who those children were staying with?

A I believe that they were staying with him or his people.

Q And do you know if Mr. Guidry supported his children?

A Oh, yes, and he always evidenced a great deal of concern for their welfare. In fact, in discussing the possible divorce, he had always impressed me as being--as that being his principal consideration.

MR. CARRERE:

If your Honor please, I have to object to that line of testimony. There is no way that the Defendant can test the credibility of what this man may have said. He is not here to be cross-examined, and in so far as this gentleman is concerned, he may have stated what is hearsay.

THE COURT:

Well, I think that the purpose of this witness is to give the relationship between the children of the decedent and the decedent--

MR. CARRERE:

Well, I would have no objection if this witness merely

states what he knows by his own observation, and his own personal knowledge, other than what was told to him. When we get beyond that realm we have no opportunity to cross-examine the source to determine the credibility.

THE COURT:

I think he was about to give us his impression.

MR. CARRERE:

If he will just keep it on the plane of what he actually knows by his seeing or his observing, then we have no objection. If he gets to where somebody tells him, then we have no way of testing the credibility of what that person had to say.

THE COURT:

See if you can testify within counsel's objection.

THE WITNESS:

It is going to be rather difficult, if your Honor please.

THE COURT:

Give your impression anyway.

THE WITNESS:

Because my acquaintance with this subject was entirely through conversations with the deceased.

THE COURT:

Well, give your impression.

THE WITNESS:

I have a definite impression--in fact, I am quite sure that he was very much interested in his children's welfare, and, as I said, in the course of our conferences about the solution to his domestic situation, that was a primary consideration

with him, and one of the reasons why he was seeking reconciliation was because he was very much averse to breaking up a home and depriving his children of a normal home situation.

MR. THOMSON:

That is all the questions we have.

CROSS-EXAMINATION

BY MR. CARRERE:

Q Mr. Knight, you have no specific knowledge as to just what the decedent may or may not have done for the children, have you?

A Other than what he told me you mean?

Q Other than what he told you?

A No, I don't.

Q Don't you know, as a matter of fact, Mr. Knight, that his wife had left him and was living with another man?

A Yes, at one time.

MR. THOMSON:

We object. I object to that, if your Honor please, it is immaterial to the issues here.

THE COURT:

He has already answered. You've got to make another motion if you want this testimony--

MR. THOMSON:

Then I move to strike that from the record, if your Honor please.

THE COURT:

I think the testimony is relevant. I overrule the objection.

BY MR. CARRERE:

Q Mr. Knight, without going into that issue at length, how long prior to the decedent's death did this unfortunate situation exist?

A Mr. Carrere, I wouldn't know.

Q Would it be a matter of two or three years, if you know?

A I know that it occurred within two or three years of his death, but as to how long it continued, I wouldn't know. In other words, I know that he sought a reconciliation even after this occurred.

MR. CARRERE:

Thank you. I have no further questions.

REDIRECT EXAMINATION

BY MR. THOMSON:

Q Even after this event had occurred, then Mr. Guidry's primary consideration was still with his children and their welfare, is that correct?

A It was a primary consideration with him, yes.

Q A primary consideration in his attempt to reconcile?

A Yes, sir.

MR. THOMSON:

That is all.

MR. CARRERE:

No questions.

THE COURT

Call the next witness.

MAROWIGNE LORETTA GUIDRY: called as a witness at the instance of the Plaintiff, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. THOMSON:

Q What is your name, please?

A Marowigne Guidry.

Q You are the daughter of Horace Guidry?

A Yes, sir.

Q What school did you go to?

A To Westwego Junior High.

Q What grade are you in?

A Eighth.

MR. CARRERE:

If your Honor please, I object to this line of testimony, because as I understand the Jones Act, Counsel is only entitled to elicit the number of children and their ages, and if he goes beyond that it is out of the realm of the Jones Act, and it is an irrelevant and immaterial subject to summarize to the jury.

THE COURT:

The issue is on the quantum, the amount that the survivors could reasonably have expected to receive.

MR. CARRERE:

Well, that is correct, during their minority.

THE COURT:

That is right, and the relationship between the decedent and his children would bear on the amount they may want to bring.

I overrule the objection.

BY MR. THOMSON:

Q When your father was alive, what was your relationship between you and him?

A Well, I mean--there was a lot of relationship. I mean he liked us all a whole lot, and he meant a lot to all of us.

Q Did you find him to be a good father in every way?

A Oh, yes.

Q Where did you live?

A In Lafitte.

Q Did you have a house of your own?

A Yes, sir.

Q At any time before his death, did your father refuse or fail to support you in every way, your immediate needs?

A No.

Q Will you point out to the court, Marowigne, and identify your brother and sister, please? Just point them out if they are in here?

A Mr. Bruce is next to my mother, then Horace Guidry, and my sister is on the other side, Cheryl Ann.

Q What school does your brother go to? Is he in school?

A Well, the Westwego Elementary.

Q And your sister, Cheryl Ann?

A To the Westwego Elementary too.

Q What grade is she in?

A My sister is in the fourth, and my brother is in the second.

Q Did you ever have any recreation with your father, that is, did your father ever take you any place, you and the other children.

A Well, I mean we used to come to town and visit our relatives and all, and he used to take us a lot of places.

Q Did he ever take you out on the lake, Lake Salvador?

A I went out with him. I went out with him and, and my mother once.

MR. THOMSON:

That is all.

MR. CARRERE:

I have no questions.

MR. THOMSON:

That is the Plaintiff's case, if your Honor please.

THE COURT:

All right, sir.

Let the jury take a five minute recess in the corridor.

(Jury leaves courtroom)

MR. CARRERE:

If your Honor please, does your Honor intend to take a recess at this time?

THE COURT:

I want to give you an opportunity at this time to protect your record.

MR. CARRERE:

In other words, I want to give you these authorities--that is what I was going to do.

THE COURT:

Let me ask you this. The rest of the witnesses in there are yours?

MR. CARRERE:

Well, they were subpoenaed by Mr. Coleman.

THE COURT:

And he may use some of them, and you're going to have to use some of them?

MR. CARRERE:

Yes, sir.

THE COURT:

Because it is not my plan to finish the case this afternoon.

MR. CARRERE:

I was hoping that your Honor would call us back and let us argue in the morning.

THE COURT:

Yes, and I do want your special requests for charges as early as I can get them so that I will be prepared to advise you which ones will be given and which ones will not be given before you begin your argument.

MR. CARRERE:

Yes, sir.

THE COURT:

When do you think the Plaintiff could have the special requests in?

MR. COLEMAN:

We have most of ours ready except two that are being worked

on, that we should have within the next hour.

MR. CARRERE:

I have most of mine now, but I would like to reserve my right to think over the situation tonight.

THE COURT:

Before we leave this evening both sides file what they have, it being understood that if you get additional ones, we will consider them.

MR. CARRERE:

The Defendant, The Texas Company, moves for a directed verdict on the ground there is no evidence in this record on the basis of where reasonable men may conclude that the decedent was a member of a crew of a vessel plying on navigable waters, that he had a permanent attachment to that vesel, that he was aboard primarily to aid in its navigation.

The Defendant moves for a directed verdict further on the ground that at the time of the accident decedent was not aboard the vessel, but was aboard a permanent structure housing a Christmas tree for an oil well, and that he was aboard that structure not in relation to his service in keeping the vessel in navigation, and that his duties aboard the platform had no relationship with what the members of the crew of that vessel would be called upon to do to keep it in navigation.

Finally, the Defendant moves for a directed verdict on the ground that there was no employer-employee relationship, a prerequisite of the Jones Act recovery, between the decedent and the owner of the vessel, a Mr. Kennedy; and that the only

evidence taken in this case tends to show beyond a doubt to the point where reasonable men may not differ, to the effect that the decedent merely indicated to the boatman where he wanted to go, and the decedent then did whatever he may want to do, while a boatman was navigating the ship and bringing it to the point indicated.

If your Honor please, the basis of that, we take the position that the evidence is in such a state at this time that reasonable men may not differ. Under the Carumbo versus Cape Cod, the Wilkes case, and the McKie case, and the Martin case, at this point, they have not proved the prerequisites for a Jones Act recovery; namely, that he was employed aboard a vessel as a member of the crew of that vessel; that the vessel was in navigation. Well, it wasn't in navigation. There is no question about that. Then, the decedent must have had a more or less permanent conrection with the ship. I don't believe, although it is alleged, that he had a type of connection with this ship which at law and under the Jones Act, is permanent.

Then, further, I don't believe it has been shown here, even to the point where it is a jury question, that the man had anything to do with its navigation or either that he was primarily aboard to aid in navigation. As a matter of fact, in the basic case, Chicago Coal & Dock Company versus Bassett, the grandmother of all of these instances, it was specifically pointed out by a court that the mere handling of a line does not constitute a man a seaman.

Now, getting to the second point; assuming for the purpose

of argument that the court would find that this is a question for the jury to determine, whether or not this man was a member of the crew. Let's assume he was found to be a member of the crew. The historical concept of the Jones Act was that Jones Act recovery would be had where a member of the crew was injured aboard a vessel in navigable waters, and, of course, the Supreme Court got away from the locus idea in O'Donnel versus Great Lakes Dredging & Dock Company, wherein a man was hurt on the dock, but there was no question but that he was carrying out the business of that ship. There they were unloading, and he was working on machinery which was being used to unload the vessel. It had a direct relation with the ship's business and the purpose for which it was in navigation--to carry the cargo.

In the instant situation, this man was, in the opinion of Counsel, as demonstrated conclusively by the evidence, he was aboard this vessel to be brought to a place where he could carry out his work on this platform, and purely and simply to scrape parafin and handle valves, and to do such painting and other maintenance work as roustabouts generally do, and this happened when he was aboard that platform doing that work, and in handling that particular gadget or line which he was handling could not be connected in any way with the navigation of the instant vessel. Those are the two basic points, if your Honor please, and we submit the matter on the law.

THE COURT:

The court is going to deny the motion at this time.

We will call the jury back now.

(Jury returns to courtroom.)

MR. CARRERE:

I would like to call Mr. Badeaux now.

If your Honor please, at this time as Defendant-1, we offer, introduce, and file in evidence the written contract for hiring this boat, signed by John B. Kennedy and J. V. Chandler, and witnessed by George J. Trauth, and Donald Messersmith.

MR. THOMSON:

We object to the introduction, your Honor, as it has not been properly identified by any witness.

THE COURT:

It has not been properly identified. Can you get a witness to identify it?

MR. CARRERE:

I have a witness here to identify it, and if not, I will ask your permission to bring someone down.

THE COURT:

Let's proceed.

MR. CARRERE:

If your Honor please, maybe we can save some time. Will your Honor require for identification the parties to the contract?

THE COURT:

Is Mr. Kennedy, the owner of the vessel, available?

MR. CARRERE:

No, he is not here.

THE COURT:

Where is he?

MR. CARRERE:

As far as I know, the last address I had from him was 1566 Annunciation. We would have had him available here, of course, usually, but I didn't expect to be met with this objection on something like that.

THE COURT:

Whom do you have available?

MR. CARRERE:

I have available George Trauth, Junior, under subpoena, and he is the gentleman who was one of the witnesses on this contract.

THE COURT:

Who signed it for The Texas Company?

MR. CARRERE:

A fellow by the name of Chandler. I can find that out.

THE COURT:

Well, let's put this witness on, and you can identify the document with another witness later.

PAUL BADEAUX: called as a witness at the instance of the Defendant, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARRERE:

Q What is your name, please, sir?

A Paul Badeaux.

THE COURT:

Mr. Badeaux, speak up so that all the gentlemen can hear you without straining. Do you understand?

THE WITNESS:

Yes, sir.

BY MR. CARRERE:

Q Mr. Badeaux, by whom are you employed, please, sir?

A By The Texas Company.

Q How long have you been working for The Texas Company?

A About twelve years.

Q And what is your job?

A Roustabout.

Q Whereabouts?

A In Bayou Perot and Lake Salvador, both places.

Q Did you work at Lake Salvador during 1953, when unfortunately Mr. Guidry was killed?

A Yes, sir.

Q What was your job at that time?

A Well, that day I just worked one day with him. My job is roustabout but not on the boat all the time.

Q But you happened to be working with him on the day in question?

A That is right.

Q And what were you doing at the time that he met with the accident?

A I was standing on the deck of the boat looking at him.

Q Where was he, Mr. Badeaux?

A Where was he?

Q Yes?

A He was on the cribbing.

Q On the platform?

A On the well cribbing.

Q And is the cribbing the same thing as what we refer to as a platform?

A That is right. That is the same thing.

Q What is it made out of?

A It is made out of--they've got piling and two inch boards on top.

Q What was he doing up on the cribbing?

A He was checking a gas line.

Q Do you know definitely it was a gas line? I say do you know definitely that it was a gas line?

A Oh, yes.

Q And what was he doing with that gas line?

A He was trying to open the valve.

Q How did you get off that platform?

A You mean how do we get on?

Q How did you get out to the platform?

A Well, from the boat to the--

Q Well, what boat did you ride on?

A The Mary Virginia.

Q And did you operate the boat?

A No, sir.

Q Did the decedent, Guidry, operate the boat, and by that I mean the man that was killed?

A That was killed? No.

Q Who operated it?

A It was his brother.

Q Who started the engine on the boat?

A The Mr. Guidry, the one that run the boat.

Q That is not the man that was killed, but the other Mr. Guidry?

A No, the other man.

Q Who steered or piloted the boat?

A Him. The one that run the boat do everything--he run the motor and he steered the boat.

Q Now, what did you and Horace do when you went from one location to the other on the boat?

A We scraped parafin.

Q When you were on the boat going from one well to the other what did you do?

A When we were on the boat from one well to the other, we just sat down until we got to the well.

Q You just sat down in the boat?

A That is right.

MR. CARRERE:

That is all.

Answer this gentleman's questions.

CROSS-EXAMINATION

BY MR. THOMSON:

Q What time did you get on board the boat that morning?

A At 7:00 o'clock.

Q Who was on board the boat?

A We were on the Mary Virginia, Mr. Guidry--hot the one that got killed, the other one is his brother.

THE COURT:

Let's get them by name. The one who was killed is Horace, is that right?

THE WITNESS:

That is right, The other one is Henry.

THE COURT:

Let's call them Henry and Horace.

THE WITNESS:

Mr. Henry Guidry was on the boat.

BY MR. THOMSON:

Q What time did the accident happen?

A Around 2:00 o'clock.

Q What did you do in this interval between 7:00 and 2:00?

A What kind of work we do?

Q Yes?

A Scraping parafin.

Q At which wells?

A I don't remember which wells, but we go from one well to the other and we just keep on going around.

Q How many wells did you scrape parafin from in that interval of time?

A That all depends; sometimes four, five, something like that, and sometimes one.

Q Who determines which wells to go to?

A Well, we do.

Q What do you mean by "we"?

A Me and Mr. Horace Guidry.

Q The parafin scrapers?

A The parafin scrapers.

Q Do you have a list of some sort that you work from?

A No, I don't have no list.

Q Who makes the final decision as between you and Mr. Horace?

A He used to make the decisions, him, Mr. Horace Guidry. I used to work with him.

Q Was he your superior?

A What is that?

Q Was he over you?

A He was over me. Yes, he was over me..

Q How many wells are there in that lake?

A I couldn't say exactly. There is thirty some odd they had at that time, I believe.

Q Did Horace know the location of those wells?

A Yes.

Q Do you know if he knew the location of every one of them?

A Yes, he did know. He knows all the locations of them wells.

Q How long has he been doing that kind of work, do you know?

A I wouldn't know how long he was working. He was working before me.

Q How long have you been working for The Texas Company?

A Around twelve years.

Q Well, did anyone else other than the parafin scrapers give orders to the skipper of the Mary Virginia?

A Well, the only way we give orders to, when we want to change places to go from one well to the other.

Q When you got to a well, who ties up.

A Well, it is supposed to be a two-man crew, but that day they only had one man. We had to tie up the boat that day.

MR. THOMSON:

We have no further questions.

REDIRECT EXAMINATION

BY MR. CARRERE:

Q This gentleman just asked you who gave orders; what did you mean by giving orders? What did you tell him? To the boat man, what did you tell him?

A To give orders?

THE COURT:

In other words, to Henry?

THE WITNESS:

To go where he wanted to go.

BY MR. CARRERE:

Q You just told him where you wanted to go?

A That is right.

Q And he took you there?

A He did.

Q Were you employed by The Texas Company to handle lines on that boat?

A No, sir.

MR. CARRERE:

I have no further questions.

MR. THOMSON:

We have no questions.

THE COURT:

Who was the other man in the crew of the Mary Virginia? You say that there wasn't the second man that day, the day of the accident, so who regularly was the second man?

THE WITNESS:

I wouldn't know. Like I say, I didn't work regularly on that boat. They had different men. I wouldn't know which one it was.

THE COURT:

That is all.

MR. THOMSON:

If your Honor please, we will withdraw our objection to the introduction of that document, to accommodate Counsel.

MR. CARRERE:

Thank you. Can we use the photostat?

MR. THOMSON:

I have no objections.

MR. CARRERE:

I will get rid of that detail while we're at it.

We further introduce and file a contract which was marked Defendant-A.

(Whereupon, the document above referred to, marked Defendant-A for identification, was received in evidence.)

ELLIS PETER LOTTINGER: called as a witness at the instance of the Defendant, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARRERE:

Q What is your name, please, sir?

A Ellis Peter Lottinger.

Q Where do you live?

A Houma, Louisiana.

Q And by whom are you employed?

A The Texas Company.

Q In what capacity?

A At the present time as roustabout foreman.

Q What job did you hold at the time of the Guidry accident?

A Production foreman.

Q Where was that?

A Lake Salvador field.

Q Horace Guidry was a roustabout under you, was he not?

A That is right.

Q Did you have to keep a record of what jobs he actually performed?

A Our regular time sheet is all.

Q Did you keep a time sheet on it?

A Yes, sir.

MR. THOMSON:

We have never seen this record before, and if you will give us just a couple of minutes. We hadn't seen them at the pre-trial, that is, had them presented to us.

MR. CARRERE:

We didn't have them then, your Honor.

(Documents to counsel.)

BY MR. CARRERE:

Q Mr. Lottinger, before this accident,how long had you been down in the Lake Salvador field?

A Somewhere between seven or eight months.

Q And were you the foreman over Mr. Horace Guidry?

A Yes, sir.

Q And what did the man in his category do? What type of work did he do?

A He did regular field maintenance when he--regular routine work. In other words, when he catches up his regular routine, if there was time available, there would be anything that would pertain to field maintenance around the tank battery.

Q Well, what did he do generally?

A He scraped parafin, cleaned chokes, and changed charts on recorders, and checked the chokes on the well and painted around the well.

Q And by cleaning parafin, you mean what?

A Scraping parafin off the tubing.

Q And what do you mean by checking the valve?

A Checking the chokes, cleaning the chokes, that is where the oil flows to and it will accumulate parafin, and he cleans that.

Q What about checking valves, which valve did he have to check?

A Well, he wouldn't necessarily check the valves; I mean he would in a case like what happened, is that what you are referring to?

Q No. I'm speaking now about the valves on the Christmas tree and the gauges?

A He cleaned them and painted them.

Q Now, were you familiar with the line involved in his death?

A Well, I am familiar as much as the line being there.

Q What kind of line was it?

A It was a two inch pipe.

Q What was it used for?

A We used it for rig fuel or gas-lift a well, in the event we needed it.

Q Do you know, to your own knowledge, how long that had been at the well site Number Twenty-one?

A No, I wouldn't know.

Q How often did Horace Guidry get to well site Number Twenty-one?

A Well, I guess maybe every other day, or third day. If there was a chart to be changed, that would be every day. If there was one on that particular well--I don't think there was.

Q How did he get out to the well?

A By the boat.

Q Do you know who operated the boat in question, the Mary Virginia?

A Mr. Guidry's brother.

Q What's his name?

A I'll be frank with you, I don't know his name. I think it is Henry.

THE COURT:

Henry, that is right.

BY MR. CARRERE:

Q And with reference to the boat, what were Horace Guidry's duties, if any?

A I wouldn't know, frankly.

Q Well, he was directly under you, was he not?

A Yes, sir.

Q Was he employed to operate the boat?

MR. COLEMAN:

If your Honor please, we want to object to that line of questions as being leading questions of the witness. He is not under cross-examination.

THE COURT:

Rephrase your question.

BY MR. CARRERE:

Q Who did you say was employed to operate the boat?

A I presume Mr. Henry Guidry. Henry Guidry.

Q What did you and your own roustabouts do aboard this boat when they went from one location to the other, if anything?

A Well, it would be to use the boat to do any kind of work if the other boat they usually used was tied up, or maybe they might have just--that was very seldom, and, as a matter of fact, I don't remember we using it, you know, any special time.

Q But what was the purpose in this boat in so far as your parafin scrapers was concerned? What was the boat used for?

A Stand-by for any event they needed the boat.

Q Well, what would they need a boat for?

A Well, usually you can tell when your well may be giving you a little trouble, and you can tell from the separator tank battery, you go back and check, and you may have to check several wells to see whether they can find the trouble, and have to use the boat.

Q With reference to the parafin scrapers, what was their routine? When they go aboard the boat, where did they go?

A They got aboard their boat at work time in the morning, which I would say would be 7:00 o'clock, and they made a tour of the wells that they were going to work on that particular day. They usually had a routine then and they knew which wells they were going to scrape that day, and they would make them first, and they would change the charts on the wells that they were changing charts on, and after they changed the charts, they made a run of the wells that should be scraped that particular day and scraped them.

Q And did you see Henry and Horace Guidry on the date of his death?

A Did I see them?

Q Yes? Did you see who was operating the boat on that day?

A Mr. Guidry, Henry. I saw Henry, and I think that is his right name.

Q And that would be the dead man's brother?

A Yes, sir.

Q Did you see Horace operating the boat?

A No, sir.

Q Now, were you in the vicinity when Horace went up on the platform?

A Yes, sir.

Q Did you see him get up on the platform?

A Yes, sir.

Q Were you able to see what he was doing up there?

A He was checking the valve that he was going to check, and see if there was any pressure on it--just checking.

Q Did you see him doing that?

A Yes, sir.

Q Were you watching him when the accident occurred?

A Yes, sir.

Q What happened?

A He went to the valve and he pulled on it just a little--I noticed that--and it didn't move, didn't open at all, and he gave it a little jerk, and the whole thing came off and went overboard.

Q And at that time he was up on the well platform?

A I was standing on the end of the boat.

Q I say he, Horace, was up on the well platform?

A Yes, he was.

MR. CARRERE:

That is all.

CROSS-EXAMINATION

BY MR. COLEMAN:

Q When Horace went to open this valve, were you the one that told him to go do it?

A Yes, I told him we were going to open the valve and see if there was any pressure, to crack it and check it.

Q How long had it been before this line had ever been used? In other words, how long since this line has been used?

A To be frank with you, I couldn't say.

Q Well, why were you checking the pressure on the line?

A We were going to move a rig on it.

Q When was the last time a rig was on that platform?

A I couldn't answer that, sir, I wouldn't know.

Q Had there been one on there for a year prior to that time?

MR. CARRERE:

The witness testified that he had only been there six months, I believe, your Honor.

THE COURT:

He said six or seven months.

BY MR. COLEMAN:

Q During the seven months you were in the Lake Salvador had there been a rig there?

A I don't think so, sir.

Q Was there a pressure gauge on this pipe?

A No, sir.

Q If there had been a pressure gauge on the pipe, would it have been necessary to open the valve to check the gas pressure?

A We would have bled the gas pressure off of the line and moved the rig on, which we usually do.

Q So you were just checking then for pressure?

A Yes, sir.

Q And you didn't have to open the valve if there had been a pressure gauge, is that right?

A What we do, we would have shut it off somewhere else and let it down.

Q Didn't you try to open the valve first yourself?

A No, sir.

Q Was there anything that you saw that Guidry did wrong in trying to open this valve?

A No, I would have done the same thing myself.

Q When the Mary Virginia goes around with the parafin scrapers, you mentioned something about changing charts on wells. What do you mean by changing charts?

A That is a recorder that we have on some of our wells, and we take them off every twenty-four hours, every day. In other words, its a sort of routine on the wells that we have them on.

Q So part of the routine of the Mary Virginia is to go around to all of the different wells and check these charts and take them off?

A Yes, the ones that have them on.

Q And the parafin checkers, parafin scrapers, do they, or does he have to get off the boat to get on the platform to change these charts?

A Yes, sir.

Q And then he gets back on the boat?

A Yes, sir.

Q How long does he have to be off the boat to remove a chart from the well?

A Just to remove the chart I would say, oh, a couple of minutes, or three minutes.

Q In other words, you have to tie up and get the chart and then you get right back on the boat and get going?

A Yes, sir.

Q And you say just a couple of minutes?

A Yes, sir.

Q How many of the wells have charts on them in Lake Salvador?

A Well, that would be a guess,but I would say at the time maybe five or six.

Q And these five or six, were they close together?

A No, sir. I would say maybe thirteen hundred feet apart, or maybe a little further than that in some cases, in other words, scattered, and you have different situations in the field.

Q How big is Lake Salvador?

A Is that the field itself, sir?

Q That's right, the lake?

A The lake itself?

Q Yes, approximately?

A I would say--it would be a guess, but I believe maybe four or five miles wide, and I think it is a little longer in length, or maybe the same--I'm not too familiar with the dimensions of it.

Q How deep is it, do you know?

A I would say eight or nine feet.

Q Who keeps the log on the Mary Francis?

A You mean on the Mary Virginia? The boat log? We don't have any boat log. We didn't have any at the time, boat log on the boat at the time.

Q At what time didn't you have any?

A Well, we keep boat logs now on all of them--

Q The parafin checkers keep the boat logs, don't they?

A Yes.

Q And he always has?

A No, not then. I am most sure we didn't then.

Q How are you so sure that you didn't keep a log then and the parafin checkers do keep it now?

A Well, I know we started keeping boat logs, but I wouldn't tell you the exact date on it. I don't know if we were keeping any at that time.

Q But you do know that the parafin scraper working for The Texas Company on these boats kept the boat log now, don't you?

A Yes.

Q But you are not sure as to--

A Well, I don't know. I couldn't say that the parafin scrapers kept the boat logs, but the boat skipper--in other words, every boat has a boat log.

Q And the man that works for The Texas Company on the boat kept the log, isn't that right?

A Well, unless it is another log, because the regular boat log, the boat skipper kept the boat log.

Q I should have asked you sooner--is the parafin scraper the skipper of the boat?

A No. The boat log we have now, it is a regular boat log and not the parafin scrapers' log.

Q I know it is a regular boat log, but who keeps it, who writes it down? Who keeps it in the book?

A The boat skipper.

Q Have you seen one of these logs?

A The boat log?

Q That is right?

A Well, I haven't seen any lately. I know we have them on the boat.

Q The last one you saw, are you willing to swear that the parafin checker and not the skipper made out that log?

A I couldn't say. I wouldn't know who made out the log.

Q Is it a correct statement to say that the Mary Virginia was assigned to parafin scraping and to checking these charts on the wells.

A That is the regular boat they use, yes.

Q That was the duty of the boat, wasn't it?

A They did that and the regular stand-by boat for any kind of work in the field.

Q For The Texas Company?

A Yes.

Q On this field?

A Yes, sir.

Q In Lake Salvador?

A Yes, sir.

MR. COLEMAN:

That is all.

REDIRECT EXAMINATION

BY MR. CARRERE:

Q Counsel has just asked you about a log, and indicated that the parafin scraper kept a log. Is that the type of log that you are talking about that the parafin scrapers kept. (Document to witness.)

MR. COLEMAN:

I haven't even seen what Counsel is showing to him.

THE COURT:

Let Counsel see that.

(Document to Counsel.)

MR. CARRERE:

He has seen them because they held them for a few minutes.

MR. COLEMAN:

I object to this. The witness has already testified they didn't keep a log on the boat, and now he is asking him if at a date prior to this time was a log kept.

MR. CARRERE:

No sir, your Honor, this is not a log.

THE COURT:

That is right. The objection is overruled. Let the witness see it, and don't lead him. Just ask him what it is.

BY MR. CARRERE:

Q I show you a group of records, the first one of which I

will mark Defenant-B and ask you what is it?

A It is a time sheet, time report.

Q Who writes up the time report?

A The men working make out the time report.

Q The men who are doing the actual work?

A Yes, sir.

Q Can you tell who made this particular report out?

(Document to witness.)

MR.COLEMAN:

I object to that.

MR. CARRERE:

It's got his initials on it.

THE COURT:

The objection is overruled.

THE WITNESS:

That, well, it would have to be one of these two in here. (indicating on record).

BY MR. CARRERE:

Q Who are they?

A Horace Guidry and James Hatty, that is the names on the report.

Q And who approved this?

A I did, sir.

Q And what is the purpose of this document, what does it show?

MR. COLEMAN:

If your Honor please, I ask that my objection go to this complete line of questions in so far as this document is

concerned.

THE COURT:

Let it be so understood.

Let's proceed.

MR. CARRERE:

If your Honor please, this is a time sheet--I didn't understand the ruling of the court?

THE COURT:

Counsel asked that his objection be made general, and I said that would be so understood.

MR. CARRERE:

Yes, sir.

THE COURT:

Let's proceed.

THE WITNESS:

This is a time sheet, time report, where the employee is paid by. It carries the work that is done during that day.

BY MR. CARRERE:

Q What does it show, what type of work does it show on that particular one (indicating)?

A Roustabout, Lake Salvador field.

Q Does it have anything to do with the operation of a vessel?

A It shows the travel time.

Q How much travel time is allowed for each man every day?

A They are allowed two hours a day travel to and from work, under the minimum wage hour law.

Q Does it have anything to do with the operation of that vessel? What does it say on there as to what they did?

A It say "seven hours scraping parafin, checking chokes, pressures on wells," and this is the number of the well that was checked, and this is "one hour checking chokes and checking well Number Twenty."

Q Is that the type of log that your men kept?

A That is right.

MR. COLEMAN:

I object to the question. It is a leading question.

THE COURT:

I sustain the objection. I asked you not to lead him.

BY MR. CARRERE:

Q Who keeps this document that you just showed us or just had reference to which I have marked Defendant-B?

A Well, that is the time sheet that is turned in to me and signed, and sent to the office.

Q State whether or not your men get any other kind of sheet?

A No, sir. In other words, they don't keep any boat logs.

Q And you mean whom, when you say "they" by your men, whom do you mean?

A Any of the employees,or, I would say, if you want the names, Mr. Guidry and Hatty.

Q And those were what type of employees?

A Texas Company employees, roustabouts.

MR. CARRERE:

If your Honor please, if there is any question raised in this case about our boat logs being kept, I would like to call the old gentleman back, the captain, and definitely ascertain that.

THE COURT:

Well, that is your privilege, whatever you'd like to do. Are you finished with this witness?

MR. CARRERE

In conjunction with this testimony,I offer, introduce, and file in evidence, the exhibit marked Defendant Exhibit B, and I make all the other exhibits of like nature available.

THE COURT:

Counsel has an objection to the offer, and the objection is overruled.

(Whereupon, the document above referred to, marked Defendant Exhibit B for identification, was received in evidence.).

RECROSS EXAMINATION

BY MR. COLEMAN:

Q Where did the wrench come from that Horace Guidry used on the valve?

A It was a wrench on his boat, on the boat that they were using.

MR. COLEMAN:

That is all.

REDIRECT EXAMINATION

BY MR. CARRERE:

Q Do you know whose wrench it was? Do you know personally whose wrench it was?

A Well, it is bound to have been The Texas Company's equipment.

Q And you don't know in whose care and custody it was, whether it was in Horace Guidry's, or whether it was in the

care and custody of the boat, do you?

A Well, that was the tool that they usually used when they are working.

Q And what kind of work?

A Roustabout work.

Q In other words, it had nothing to do in connection with the operation of the boat?

A I wouldn't think so, sir.

MR. CARRERE:

That is all. I have no further questions.

THE COURT:

How many boats like the Mary Virginia did The Texas Company have in the Lake Salvador field used in connection with parafin scraping and other roustabout work?

THE WITNESS:

We had the Mary Virginia as a regular boat in the field, and we had the regular roustabout boat that we used in Lake Salvador. In other words, two boats. In other words, we used the other boat between two fields. We had another field.

THE COURT:

Now, during the time that you were on the Lake Salvador field, the six or seven months prior to this accident, did the decednet, Horace Guidry, use any of the other boats, or did he use the Mary Virginia all the time?

THE WITNESS:

Well, I don't think he used the other boat that I know of, sir, unless he used another boat maybe in replacing the Mary Virginia at some other time, but I don't recall of any.

THE COURT:

Did anyone other than Horace Guidry use the Mary Virginia, any other roustabout other than Paul Badeaux and Horace Guidry?

THE WITNESS:

For that same kind of work?

THE COURT:

For any kind of work.

THE WITNESS:

Well, there were other men, I believe, that used that boat. I wouldn't be able to name them right offhand.

THE COURT:

But there were others?

THE WITNESS:

It would be some of the other crews that maybe used it and went to do some kind of work with them, and had them, but I couldn't say anyone in particular.

THE COURT:

Were Horace Guidry and Paul Badeaux the primary parafin scrapers and choke checkers in the Salvador field?

THE WITNESS:

At that time I think that Hatty was with them. He wasn't with him, but he was on that job, I think, regular with him.

THE COURT:

Now, the boat had how many in crew ordinarily?

THE WITNESS:

One man, sir.

THE COURT:

It was a one-man boat?

THE WITNESS:

I think one, and at other times they had two men on it.

THE COURT:

At other times, and on this date there was only one man?

THE WITNESS:

Yes, sir.

THE COURT:

What size was the vessel? In other words, was it twenty-five, thirty-five, or forty feet?

THE WITNESS:

I would say around close to forty. Close to forty. I'm not too familiar with size, but I think around there.

THE COURT:

And you say it was customary to have only one man in the crew on the vessel?

THE WITNESS:

No sir--you mean--

THE COURT:

I say it was customary to have one man?

THE WITNESS:

Yes, sir.

THE COURT:

And you said that at other times they were two men on the crew?

THE WITNESS:

I think there were. There were two men at times on the boat.

THE COURT:

At times, but at the time in question there was only one?

THE WITNESS:

Yes, sir.

THE COURT:

Who supplied the other man when there was another man?

THE WITNESS:

That was when the other skipper was there together--it was the two of them on there. I think there was. Anyway, I'm not quite sure, but I think it was two men on some days when they were out there. Some days, when they were out there, there were two men on the boat together.

THE COURT:

You say some days when they were out?

THE WITNESS:

In other words, the way they worked, they were the two together at one time when they weren't both off, they had two. I think there was two men on the boat at one time.

THE COURT:

In other words, Henry Guidry was on the boat along with Matherne?

THE WITNESS:

That is right.

THE COURT:

Is that what you are saying?

THE WITNESS:

Yes, sir.

THE COURT:

Matherne was the second fellow sometimes?

THE WITNESS:

There was two.

THE COURT:

Was he on the boat two days a week? I mean Matherne was?

THE WITNESS:

To be frank with you, I would have to guess to say whether he was.

THE COURT:

When Matherne was on the boat, what did Matherne do?

THE WITNESS:

He did the same thing the other gentlemen did, run the boat.

THE COURT:

Were they on the boat at the same time?

THE WITNESS:

They were some--I think they were on the boat two days--I don't know how many days a week at the same time. And then one was off and the other one was on, and the other one would come in and the other one was off. I think they were at the same time--it may be two days, but I don't know just when.

THE COURT:

Are there any further questions?

MR. CARRERE:

May I have just a few seconds, please.

Your Honor, I'm going to call one more witness with reference to these so-called logs this evening.

GEORGE TRAUTH, JUNIOR: called as a witness at the instance of the Defendant, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARRERE:

Q What is your name?

A George J. Trauth, Junior.

Q You are employed by The Texas Company?

A Yes,sir.

Q In what capacity?

A Assistant District Chief Clerk.

Q You were subpoenaed by the Plaintiff in this case here today?

A Yes, sir.

Q You had a subpoena duces tecum to produce a log?

A Yes, sir.

Q Do you have it on you?

A No, sir.

Q Do you have it, the subpoena?

A Yes, sir.

Q May I see it?

A Yes. (Document to counsel.)

MR. COLEMAN:

To save time, we will admit that The Texas Company didn't produce any log as a result of our subpoena asking for it.

MR. CARRERE:

That is not saving time; it is just confusing the jury, or confusing the issue in front of the jury.

BY MR. CARRERE:

Q They asked you to bring with you the log book of the Mary Virginia in use as of February 4th, 1953. Now, is there any such log book in existence?

A No, sir; there isn't.

MR. CARRERE:

I have no further questions.

CROSS EXAMINATION

BY MR. COLEMAN:

Q You testified that there isn't such book in existence. You mean there isn't any such book in your possession with The Texas Company, and that is all you know?

A We have no record of any.

Q But you don't know if someone else may have kept a record and you not have it, is that right?

A To the best of my knowledge, sir, there is no record kept on boats of that size.

Q Where does your knowledge come from? Have you ever been down on the boat?

A Not that particular one, no.

Q Have you ever been on Lake Salvador?

A Not out on the lease, no.

Q So you have no knowledge of what is kept on the boat, as far as the boat is concerned, and the log, isn't that right?

A On that particular boat that is correct.

Q The only thing you can testify to is that in so far as the records in Harvey that you are in charge of, there is no log in those records, isn't that right?

A We have no log, that is right.

Q In your records over at Harvey for The Texas Company?

A That is right.

MR. COLEMAN:

That is all.

REDIRECT EXAMINATION

BY MR. CARRERE:

Q But you would be in custody of the records for The Texas Comapny?

A Not all of the records, sir.

Q Who would be in custody of such a log, if it was in existence? Who would know as to its existence, if there was such?

A If there was a log it would probably be maintained on the boat. We have no use for them and we don't require them.

MR. CARRERE:

If this is an issue in the case, I want to bring the captain back, and in order to develop that, I would also like to subpoena tne proper Coast Guard officials to show that no such log is required on boats of this size.

THE COURT:

You don't have to subpoena anybody to prove that. It is

not required.

MR. CARRERE:

I don't want to belabor the point, but it has been raised in the case, and I would like to have an opportunity to bring the captain back.

THE COURT

Call the captain.

MR. CARRERE:

I would like to take this gentleman under cross-examination

THE COURT:

You cannot take him under cross-examination. This is your part of the case. This is your witness now.

Let's proceed.

HENRY GUIDRY: recalled as a witness at the instance of the Defendant, having previously been sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARRERE:(Through interpreter).

Q Ask the gentlemen if he ever kept the log on board of the Mary Virginia?

A No, sir.

Q Did he ever see a log being kept aboard the Mary Virginia?

A As I say, I can't think of his name--

THE COURT:

Ask him the question again.

(The interpreter repeated the last question.)

A Not of the boat. I saw a man keeping a record, but I don't

know what they are.

BY MR. CARRERE: (Through interpreter.)

Q Will you show him this record and ask him if this is what he saw? (Document to witness.)

A What is this?

THE INTERPRETER:

He says "what is this?" I don't think he reads.

BY MR.CARRERE: (Through interpreter.)

Q Now, ask him if that appears to be the type of record he saw?

A The record of the work, Horace and another.

Q Ask him if the records were about the work on the well or about the boat?

A In other words, all together.

Q What does he mean by that?

A In other words, marking so many hours for the whole work.

MR. CARRERE:

Thank you. I have no further questions.

THE INTERPRETER:

Hatty is the name that he couldn't think of.

MR.CARRERE:

If your Honor please, that is the Defendant's case.

THE COURT:

Is there any rebuttal?

MR. COLEMAN:

May we have a couple of minutes?

THE COURT:

We will take a five minute recess.

(Short recess.)

(After recess.)

MR. COLEMAN:

The Plaintiff rests.

THE COURT:

The evidence is all in. The court will consider some legal issues now, and tomorrow morning at 10:30 we will have argument, the instructions, and the deliberation by the jury.

The jury will now be excused until tomorrow morning at 10:30. You will understand that you are not to discuss the case with anyone. You are to reserve your opinion in this case, and you are to reserve your decision, your judgment in this case until it is given to you for your deliberation, and all of you together will discuss it and come to a conclusion, Come back at 10:30 tomorrow morning.

(Jury leaves the courtroom.)

MR. CARRERE:

Your Honor, at this time the Defendant reiterates as though stated in the record in extenso, the motion for a directed verdict, to the same extent, same purposes set out at the end of the Plaintiff's case.

If your Honor please, without belaboring the point, we just have this to say; that as far as the Martin case is concerned, and in so far as a leading case heretofore is concerned, or probably still the leading case, the Chicago Coal & Dock versus Bassett, if your Honor please, in that case and in the Bassett case it was held that the man, that the commissioner had found that the man was a longshoreman and not a

seaman. It was a question of fact. There was sufficient evidence to support the commissioner's findings. Now, having been thoroughly briefed, I have to appreciate that the law is that the question of whether or not a man is a seaman is a matter of fact. But, if your Honor please, it is a matter of fact just to the same extent as any other fact submitted to the jury is a matter of fact, normally submitted to the jury, and, in view of the very difficult aspects of these cases we believe in, and respectfully submit, that in a case such as this, if we are correct, that no one could but find that this man is not a seaman, and we believe that is something that may be acted upon by motion, such as this, and we ask your Honor's indulgence and consideration.

There is no sense of me belaboring the point. We have set out to your Honor that the basic requirement, fundamental requirements of the Jones Act are not present. Even if they were, the man was certainly not furthering the navigation of the vessel, or furthering his employment as a seaman when he is aboard this dock for the purpose of checking these particular lines. They were remote from any seamanship's duties of handling lines that may have existed aboard that boat, and we so submit. We further say that the employee-employer relationship between the operator of the boat and the man in question has not been proved by a preponderance of the evidence.

THE COURT:

The court will make the same ruling at this time.

The court would like to have all of the proposed requests

for charges, and I will meet Counsel at 10:00 tomorrow morning in the anteroom immediately adjoining the courtroom. Give the proposed charges to my Crier to deliver to my chambers.

Court stands at recess.

(Whereupon, court recessed.)

o-o-o-o

MORNING SESSION

(Tuesday, March 20, 1956)

THE COURT:

We are approaching the end of the case. We are now going to have the argument of Counsel, the summation of Counsel, followed by the instructions.

Counsel for the Plaintiff opens and closes. Both sides have been limited to a total of thirty-five minutes, which they may or may not use.

You may proceed.

MR. THOMSON:

Ladies and gentlemen of the jury, you have been very considerate in your attention to this matter, and at the outset I want to express the appreciation of our client's three children, the three children of the late Mr. Guidry, for your attention and kind consideration. As you know, this is important to them. This is the day, and the only time, that they will have the right to present this claim which they have to a court for decision under the Jones Act, the Act which we are suing under.

Now, the court will instruct you as to the law. One of the

questions in this case which he will give you very lengthy instructions regarding, is the question of whether or not the decedent was a seaman within the meaning of the Jones Act. Now, let's consider the facts and talk about them for a minute.

First, you can look at this question from several angles, one of which is the boat itself, the boat to which he was attached. You will remember that Paul Badeaux testified that in the seven months he was there, Henry Guidry, the decedent Horace Guidry, was also working on the Mary Virginia. The Mary Virginia, according to Mr. Lottinger, was a forty foot boat. Also, according to Mr. Badeaux, The Texas Company witness, it was normal to have a two-man crew on board the boat. Some of the time they had a two-man crew, and sometimes only one man. On the day of the accident, according to all witnesses, there was only a one-man crew on board that boat. That man was the decedent's brother, Henry Guidry.

Now, Henry Guidry testified that the decedent tied up the boat; that he gave him orders as to when and where and in what directions to take the boat. True, Henry Guidry was the pilot, but it takes two men to operate that boat. It takes more than one man, or a one-man crew. Now, that is not my opinion; that is the statement of Mr. Lyman Porter, and Mr. Porter is now the superintendent of The Texas operation.

Now, we took the trouble of taking an excerpt from the testimony which I have here, and last night we worked with the reporter and I have this certificated excerpt from the testimony itself. I think that this is a very important point in

this case, particularly on the question of seamen. Now, this is what Lyman Porter said, and Lyman Porter is the man who has been with The Texas Company for twenty-one years, and worked up from a roustabout and knows everything about the Salvador field, and is the number one man as far as The Texas Company is concerned, on the Salvador operation. Now, the question was by Mr. Coleman,"What is the normal crew on the boat of the type of the Mary Virginia? Answer: Two men.

MR. COLEMAN:

That is all."

Let's look now at what Mr. Paul Badeaux said. Badeaux you will remember, was the man who acted as a parafin scraper, the man who was under the decedent, the man who took orders from the decedent as well as his brother. The decedent was in charge of that vessel and he gave orders to the skipper, and he gave orders to Badeaux, and he told him where to go and when to go. When we asked Mr. Badeaux--I asked that question, "When you got to a well, who ties up? Answer: Well, it is supposed to be a two-man crew, but that day they only had one man. We had to tie up the boat that day." There were only two men on that boat besides that skipper, Badeaux and Guidry. That is who he means when he says "we". Guidry, the decedent, tied up that boat. At that time he was performing a function of the extra crew. The extra man wasn't there that day.

We are not talking about an occasional tying up of a boat, gentlemen, something that only happens once in a rare instance. This was a boat that from the time they started work at 7:00

o'clock in the morning until 4:00, or whenever they quit, when they were actually on the job at parafin scraping, they were going from well to well checking the charts. You heard Mr. Lottinger say that there were thirty wells in that lake, or over thirty, and that each one of them has to be checked about every day, the charts, and they simply pull up to the well site, check the charts, get back on the boat, and go off. That is in addition to the parafin scrapers' duties. The parafin scrapers' duties also took them to the wells all day long. They were going from one well to another, from well to well. You need two men to operate that boat. Can you visualize the sight of a forty foot boat, according to their only witness, Mr. Lottinger, for whose veracity they vouch--they called him--and we tried to prove our case, gentlemen of the jury, under these circumstances.

We, of course, are unable to present to you the testimony of the decedent himself. We called every available man. We subpoenaed them. One did not show up, Mr. Matherne, but we placed his brother on the stand and he told us as best he can, in his paralyzed condition, and I think that you will agree with me that his testimony had the ring of honesty all the way through. He truthfully told you from whom he took his orders. He took his orders from his brother. He truthfully told you that his brother tied up, and he truthfully told you there were only three men on the boat that day, and his Honor will instruct you on that point as to whether or not this particular day is important in considering this question.

Look at the charter. The charter of that boat says that it is chartered for a two-man crew. Mr. Porter says that. Their witnesses agree that it takes two men to operate that boat, and took someone to fulfill the duties of the extra man who wasn't there that day. I think we have proved beyond a preponderance of the evidence that the decedent fulfilled those duties.

Now, let's look at the question of a seaman from the standpoint of the boat itself. Let's look at it from the standpoint of the operation of the boat. What was that boat designed for? Was it a passenger boat, or was it a parafin scraping boat and a chart checking boat? That is what they said that boat was used for day in and day out. It was used for stand-by in case of emergency, yes, but the real, the main job of that boat, according to Lottinger, was parafin scraping. Now, the decedent was the main parafin scraper. He was the one who was on the boat every day, five days a week, or whatever the time that he worked.

Now, Badeaux testified that he took orders from the decedent. He was his assistant to help in that work. The point I am making to you now is that I believe the evidence shows that the main object of that boat, the Mary Virginia, was to keep the parafin in good condition, keep these wells, these thirty odd wells, so that the oil can come up through them, keep the parafin scraped from the pipes. I also think the evidence shows beyond a question that Mr. Guidry was the main one, the main cog. The decedent was a parafin scraper;

he was different from other roustabouts in the field. We are not talking about a roustabout who comes out to the lease and is on one boat one day and another boat the next, and this day he is cleaning a well, or if they are drilling a well he is doing something else. We are talking about the decedent who was on the Mary Virginia, attached to it, although they didn't classify him as a crew member. We will point out why in a little while.

Yes, he was on this boat every day. He was doing the same job every day, and what is that job? A job of which the Mary Virginia was an integral part. He couldn't have done it without the use of the Mary Virginia, and quite apart then from this question of the number of the actual crew, whether it is a one or two-man crew.

I want you to bear in mind when you hear the court's instructions, and in deciding the question of a seaman, whether or not the decedent contributed to the main job of that boat.

The Texas Company introduced in evidence testimony of one of its witnesses about the travel time. And, of course, their whole argument is that Mr. Guidry was merely a passenger on that boat. That is ridiculous on the face of it. Passengers don't get aboard a boat and give orders, tell the skipper what to do. He doesn't tell the skipper where to go, or what time. He doesn't tie up the boat. His duties were an integral part of the operation of that vessel, and he was paid as such from the time he got on board the Mary Virginia to the time he left. He ate his lunch on board too. The travel time was seventy-five

cents an hour. The travel time started when he left the landing at Lafitte and they traveled by passenger boat, not the Mary Virginia--a passenger boat from Lafitte out to the lease in the middle of Lake Salvador. He only got paid seventy-five cents an hour because he was just traveling. Once he got on the Mary Virginia he was working, and that is when his real pay began.

I will pass now very hurriedly over the question of the negligence.

I think the strongest kind of testimony that I have ever heard as to whether a man was performing a job in a normal, prudent, way, is the testimony of Mr. Lottinger, the production foreman, and, again, a Texas Company witness. The question was asked Lottinger, "Was there anything wrong in the way Guidry put this wrench on the valve?" He said, "No. I know I would have done the same thing myself." He was completely free of fault in connection therewith.

On the other hand, Mr. Lyman Porter testified straight up and down that those threads gave way. This is a high-pressure gas system. Now, you heard the testimony as to the noise involved in the explosion. Can you picture in your own mind what happened when that explosion--how it was unexpected, and what he was hit with, and the body knocked in the air and into the water and never came up.

I think, suffice to say, on the question of negligence, that the pipe was there, and yet Mr. Porter was unable to say after his investigation when they had last used the pipe. They

knew it wasn't used at the time of the accident. They knew they were going to check the valve to find out how much pressure was in the line. He knew that he ordered the decedent to go do it, and the decedent took a tool off the Mary Virginia--again the Mary Virginia is linked inextricably with everything that happened in that case. It always comes back. The tool was part of the ship's equipment. This wasn't the decedent's idea to open this valve. He was ordered to do so by his superiors, and certainly that was in the scope of his employment. There can be no question about it. He stepped off the boat, got on the platform, put the wrench on the valve, and then it happened. At that point the situation as it existed was completely changed. A wrench created a terrible situation out of what had existed before.

Now, let's take a look at what are the facts as far as Mr. Guidry is concerned, what his position was at the time he was killed. He had a house, three young children, four and a half, seven and a half, and fourteen years of age. He was separated from his wife. He had the children--he was taking care of them. He was the one upon which they had to call for assistance, help, support. He was the one they looked to for shelter, clothing, food, and so forth, and advice, guidance. At that point, because of the negligence of the Defendant, a company for which he had worked for sixteen years prior to his death, steadily employed, earning good money but doing a good job on the development of this field in which there were thirty oil wells, and it was testified that he knew the location of

everyone, and I think it is safe to assume from the evidence that he had visited everyone of those oil wells and had made a substantial--had played a substantial part in developing this field, in keeping it in good running order for The Texas Company, because he had been working for them for sixteen years, and then what happened? Through no fault of his own these children are left absolutely sliced off from their sole support, guidance, financial return--everything that they looked to in the father through the years, up until their majority.

You heard the testimony of Mr. Nat Knight, and certainly a disinterested party, an important attorney, and probably you all know him by reputation as a member of the Louisiana Public Service Commission, who was nice enough to come over here and testify as to the attitude of this man, Guidry, to his children, and can you blame him? You have seen the children yourself. Haven't they been well-behaved in this courtroom? What did you think of his daughter, who is now sixteen, and who was about fourteen,or rather, thirteen and a half at the time he died? All those are factors that you have to take into consideration.

We requested of the jury when you first came into this box, through the Judge, that you would approach these questions with an open mind, particularly the question of being a seaman. We think we have shown clearly by the evidence, by the preponderance thereof, that he was a seaman, that he met his death through no fault of his own, but solely through the gross negligence in not maintaining this pipe, or putting it on

wrong, or not having the proper threads; but in any event, pinning the cause of this very tragic death on the threads connecting the elbow and the riser--not any place where he had his wrench, but the elbow and the riser.

We feel that the jury should consider what has been taken away from these children; and the jury should consider the life expectancy of the decedent, his earning power, the fact that he had worked sixteen years for The Texas Company, and that at the time of his death in the year 1953, that for the first five weeks approximately he had earned about $900.00. The salary was going up all the time, and probably that was a little high, but surely his average was right up to $4800.00-$5000.00, something like that.

Those are the points that I wanted to get across to you, and my partner, Mr. Coleman, will complete my argument.

MR. COLEMAN:

Your Honor, and ladies and gentlemen of the jury: You probably have an important question in your mind, and the question is what did The Texas Company get out of this? Suppose this man was acting as a seaman, did The Texas Company have anything to do with it? Well, this is a most important document that is in the record, and it is very very important, and it hasn't been called to your attention as yet, and you must just look at it when you consider it in this case.

This document is what is called a charter party that was introduced by The Texas Company showing why this boat was in their employ, and why it was being used as a parafin scraper.

Now, in this document it distinctly states the price of this boat, what they will pay for it when they have a two-man crew, and that is thirty dollars a month; then, when there is a one-man crew, it is twenty-five dollars a month. They knew that this boat needed a two-man crew. Certainly they knew it. The only man that positively was in charge of it, right here, Mr. Porter, and we stopped--we didn't ask him anymore questions--and that question is in the evidence given by Mr. Porter, and it was,"What crew does the Mary Virginia normally have?" He said, "A two-man crew." He didn't know too much about the Mary Virginia. He did know, though, that The Texas Company was sending a boat around to thirty different wells, tying up just a minute, having a man jump over, check a chart, get back on and go on to another one in this great big lake, with one man operating a lugger nearly forty feet long. He knew that and his answer was honest and immediately to the point.

Then, you got the testimony of the man that was on there that day. He was a Texas Company witness, and his name was Paul Badeaux. The Texas Company put him on, and that is their employee, and an honest man, and they themselves vouched for his veracity. We didn't ask him any further questions when he answered this question, "When you got to the well, who ties up?" And that was for that day, that morning. He answered,"Well, it is supposed to be a two-man crew, but that day," and only that day, "they only had one man. We had to tie up the boat that day." That is a Texas Company employee, tied up the boat that day. That is his sworn testimony. That is his testimony under oath.

Now, when a man is on the crew, whether he has the name of seaman plays no part in this. The only issue is, was he performing those services? What services was he performing? Every time, when he worked on this boat, and it wasn't this one time where he just tied up the boat once, and if that were so we wouldn't have been here before you, because we know that many times when you are on a boat and the man just stands up on the front and tiest, the boat up, that he is not a seaman, but this man was a seaman. For sixteen years he knew that lake. What did he do? He employed the other man to work on the boat. That is sworn testimony, and that brother didn't lie when he got up there. If he was a liar he could have said, "My brother took the boat and he steered it." He could have told a great deal of lies, but he didn't. He told you the truth. Who could have impeached him if he had said that when the two of them were on there, "My brother had the boat." He didn't. He said one, and, "Me, I steered it." But when he told you that his brother pointed out the definite places and navigated that boat and told him where to go, he was telling you the truth, and these other two men are telling you the truth.

Horace served the company well, saving them these five dollars every time there was only one crew man aboard, serving in that other capacity. He was a crew man. Now, in so far as the other work, and we don't doubt that he did parafin work--we say that he certainly did the parafin work. We tell you he did, just as he checked the charts, and he did many other

things, but don't forget the other deal that he did, and let the court tell you how you are to apply the law to those type facts.

Now, as you know, our time is limited, and we have to act fast and talk fast. If I am talking too fast, I hope that you will excuse me, but we have to get to the question of what caused this accident.

Now, the only way that we could bring up the case directly, and we had to take the chance,the risk, of putting him on, but we put on Mr. Porter, who was there immediately afterwards. Mr. Porter saw the threads. Mr. Porter told you that in his opinion the thing that caused it was defective threads. Then, Mr. Lottinger told you, "Our man didn't do anything wrong at all." How in the world could that accident be our fault? The Texas Company isn't an insurer. They are not responsible for any and everything. But they do have the responsibility when their own man comes up here and gives us his opinion as faulty threads causing it. At least, they could have had all the experts in the world open to them, and they could bring us up another expert and show us if this was an impossible thing and may have happened any other way. You didn't hear one expert like that. You just heard The Texas Company employee testify as to his opinion, and, as yet, not another witness came up.

We claim that we have carried everything that we can carry on the burden of proof, and showing you what happened in that accident. If it happened for any other reason, for any

impossible cause, we think we shouldn't have the responsibility of it. It is their duty to bring people up and tell that to you, and we are willing to listen. You didn't hear one word after their own man who was in charge, testified most reluctantly that in his opinion he saw those threads, and the threads came loose. You have had a plumber come to your house and thread pipe right there, and if that pipe breaks right at the threads, on the threads, where the threads are, it is the plumber's fault. He has put on too few or too many threads, and it hasn't held it tight enough. He should know how many threads you need for water pressure there. Well, this pipe didn't break in the middle, but it broke right at the threads. The threads were gone. If there had been thirty maybe instead of five or six threads, we wouldn't be here today, and Horace would be here with his children. That was not our fault; it was The Texas Company's fault, and we don't say that it was criminal neglect, but all that we are saying to you is that a wrong has been done and you have an opportunity to right it in the best way menhood knows how to do.

Now, we get down to the last question and that is the question of damages. We have asked you to bring in a judgment of $150,000.00 for these three children. That may sound like a fabulous figure, and it may sound way too high for anything. You will have to determine what we are entitled to. We can only determine it on what we feel is proper and just.

Now, under the law we are only entitled to receive from you the damages for twenty-one years, until this oldest child

gets to the age of twenty-one, and after the child is twenty-one he is supposed to be on his own. But then, there is something far greater than money, and that is the loss to a child when the child loses his father. They wouldn't swap one of those oil wells that they've got out in that lake for their father today.

THE COURT:

Just a minute. Are you making an objection?

MR. CARRERE:

I would like to object to that line of testimony as being irrelevant under the Jones Act.

THE COURT:

Ladies and gentlemen of the jury, under the Jones Act under which recovery is to be based in this case, if there is a recovery, the only consideration in determining the amount of the award, if you determine there should be an award in the case, is the amount of money which the children in this particular case could reasonably have expected to receive from their father during the period of their minority. In other words, this case isn't a love and affection case, and love and affection is not an item of damages, nor is the instruction, influence, or whatever, that the father may have given the children. The item of damages to be considered under the Jones Act is the pecuniary item of damage, that amount of money which these children, during their minority, could reasonably have expected to have received from their father, had he lived during that period.

& You may proceed.

MR. COLEMAN:

May I note our exception, please?

THE COURT:

Note an exception for the Plaintiff to the court's instruction.

MR. COLEMAN:

You will have a letter here which will show you that this man earned $929.00 for five weeks. You can determine from that what his earning power was. You can extend that out for seventeen years, and then determine for yourself what this child or these three children were entitled to. You have the figures and you can bring that in--you're entitled to bring that into the courtroom, this letter, which it is admitted that they were his figures and his earning power, so I ask you to remember those figures for those five weeks in determining the amount that you bring in, if you feel that we are entitled to the amount.

Now, there is a Judge in the courtroom that gives you the law, and there are the lawyers on both sides to argue the facts, but there is a higher Judge that determines justice, and I feel confident that each and everyone of you are governed by the higher Judge, and that you will use justice in bringing in a judgment in this case.

JUROR NUMBER FIVE:

May we look at this contract and see that letter, please?

THE COURT:

You will be given an opportunity to look at those

afterwards.

MR. CARRERE:

Ladies and gentlemen of the jury, we, too, thank you for your attention.

It is incumbent upon you, because of the fact that you accepted the duties and obligations of a juror, to discharge the duties the Supreme Court of the United States has put upon you in cases of this type; and, that is, that it is up to you to decide the factual issues and status of the man in question.

At the outset, let us say this; The Texas Company has been sued herein under the State Workmen's Compensation Law, and under the Jones Act. Our position is simply this, that the man is entitled recovery under the State Workmen's Compensation Law, which is not before you here today but will be decided by the Judge.

MR. COLEMAN:

We would like to note an exception to Counsel's statement in regard to any other matter that is not to be decided by the jury.

THE COURT:

Let the record show that Counsel has excepted to the statement.

The jury will understand that before the jury today is only the question of the Jones Act, and whether or not there is a right to recovery in this case under the Jones Act.

You may proceed.

MR. CARRERE:

In other words, I want to make my point once and for all, and would likeyou people to remember this, that we take the position that it is Workmen's Compensation coverage, that he is entitled to recover under that Act. We take the position--

MR. COLEMAN:

Your Honor--

MR. CARRERE:

If your Honor please,if Counsel will let me finish and make my point, and then he can make his objection. I thought we had this understood.

THE COURT:

Let Counsel make his statement, and then, when he finishes his statement, you can protect yourself in the record.

MR. CARRERE:

If I can make a complete statement, I would like it to be known that we take the position that there is coverage under the Workmen's Compensation Act, and that the Plaintiff herein is not entitled, under the law and the facts, to recover as a member of a crew of a vessel under the Jones Act.

MR. COLEMAN:

The statement that we would like to make is the fact, sir, that they are not paying five cents under Workmen's Compensation, and the statement that was made that they were paying is incorrect. And, further, that Workmen's Compensation, which is a small, minimum amount that goes to a child, to the children, under this case, has nothing to do with the Jones Act,

where he is entitled to a fair and proper recovery.

THE COURT:

You will be allowed to argue the case at the close of the case.

MR. CARRERE:

If your Honor please, in view of that statement by Counsel, he has misquoted me. I didn't make such a statement.

THE COURT:

The jury heard all of this. Let's go on with the case.

MR. CARRERE:

If your Honor please, the question about what the Workmen's Compensation Act provides, and the other statement by Counsel are highly prejudicial, and we would like to reserve our rights and we move for a new trial.

THE COURT:

It is overruled.

Let's proceed.

MR. CARRERE:

Well, I hope that we made our point as to our contentions in that respect, because we will not mention it again. We would like you to remember it, please.

Now, our appreciation of the facts of this case are somewhat different than those that Counsel have just told you. Now, any case is divided somewhat in to two elements; (One) The question of liability or the right to recover, and (Two) what would they recover in the event they do recover. Now,Counsel has given to you what we consider an absolutely absurd idea on quantum in this case, and although we differ in the liability

and status situation, we have to, in view of the statements made, we have to make some comment on quantum in cases of this type.

Now, if I may use the board, and from this letter which will be made available to you, and this is my letter which was put in the record here, and that shows that the gentleman earned $4399.10 in 1951, and in 1952, $4674.07; and in 1953, and the accident happened shortly after the start in 1953, they had paid him $929.00. (Indicating on blackboard.)

Now, in this case, I believe the court will instruct you as to the law, if you get to the point of quantum in this case, and there are three children. Now, I am not in this courtroom to air out anybody's linen, but it has been stated here that the wife of the decedent had left him and was living with someone else, and, in fact--

THE COURT:

I think that there is no claim for the widow. The jury is instructed not to consider any claim for the widow.

MR. CARRERE:

Let's get to the basic point. Let's see what the man's average pay was, as this indicates, and let's give him the top figure, the $4600.00. Let's make it $4700.00 (Indicating on blackboard.) Now, Mr. Nat Knight, the attorney who apparently handled the affairs for this family at the time, states that he thought that possibly the children were living with the husband's mother or father, or maybe they were living with the husband. Now, under these circumstances, the three

children at their ages, and one was eight--let's put it this way, eight, fourteen, and sixteen. The father had the obligation of supporting the three children for eight years--I mean as to all of the three. At the time that one of them becomes twenty-one years of age, and, thereafter, the father had the obligation of taking care of the two children remaining for fourteen years. And, thereafter, the second child reached majority, and had an additional time in there of two years where he had one child on his hands by way of support. Do I make myself clear? Because, the younger child was in the fifth year, and five plus a total of sixteen years is twenty-one years for all of them.

Now, what could a man reasonably be expected to turn over for his children's care if he makes a gross of $4700.00 a year? What about the hidden taxes? What about the unhidden taxes, State income tax, Federal taxes, and whatnot? I dare say that if a man makes $4700.00, if he came up after all taxes concerned with $3800.00, I would say that he was doing pretty well.

Now, a man with his expenses of going to and from work, his own personal expenses, if his children were living with the mother and father, how much could he be expected to donate to their support, or how much--when I say "donate," I mean give to the support, or even if they were living with him? Let's take the minimum figure, and suppose he had all these children on his hands, and suppose he was able to produce 2000.00 for their support for eight years while he had three

children. Then, eight times two, that would be $16,000.00, and supposing--remember that this man can get sick during this course of years. He could lose his job. We could have a depression, and the tax situation could increase, and all such probabilities as that which you can take into consideration. And then, thereafter, after he had two children on his hands, suppose that he was then able to carry on, we will say, at $1500.00 now. That would be having, after that, that would be six additional years for two children at $1500.00, that would be an additional $9000.00, would it not, and then the final year, he has one child which he is supporting only because the other two children are of age. If you follow me there, three children for eight years, and an additional six years, he would have two children on his hands, and for an additional two years he would have only one, because in the meanwhile his other children are reaching their majority. Then for the two years that he had only one child on his hands, suppose he put $1000.00 a year out for that child. That would be an additional $2000.00. (Indicating on blackboard.)

Now, let's see if my statements are reasonable. Add six and two, eight, so that would be $27,000.00, but that is not what he would receive, if you agree with my figures, because as the court will instruct you, this figures is to be discounted down to the present day. In other words, they get the money in a lump sum, if they do recover, and they are getting the money now, the last dollar of which they would get so many years in the future,when that last child is twenty-one

years old, the one that is five, or sixteen years from now, so you have to discount each dollar down to its present value at the current discount rate that the bank would handle transactions of lending money to people of this kind. That is the way, in our argument, that you determine quantum in a case like that. And, that is all we have to say about quantum.

Now, what is the defense of The Texas Company on the Jones Act? The Texas Company's defense is simply this; we don't believe that under the facts developed in this case that an employer-employee relationship existed between the decedent, Mr. Guidry, and the operator of the boat. Now, as we appreciate the evidence, this contract which Counsel has presented to you, says this--it is a charter of the boat between Mr. Kennedy, its owner, and The Texas Company. The boat is not for thirty dollars a month, or twenty-five dollars a month, but rather is for thirty dollars per day when a crew of two men is aboard, and the price of twenty-three dollars per day when a one-man crew is aboard. And, who furnishes the crew? Mr. Kennedy, the owner.

The only evidence you folks have before you, as I appreciate the record, is the contract which sets that out. You can read it, take it in the chambers with you, if the Judge permits. Now, that relationship shows there was in existence a contract between Kennedy, owner, and The Texas Company to furnish them a boat and a crew. If he furnished two men he got paid a certain price. When he furnished one man, he got paid a certain price per day. Now, the old gentleman, the old

skipper of the boat, Guidry, was asked who paid him, by whose check, and he said, "Mr. Kennedy."

There is no evidence in the record as to who had the right to hire and fire, but you can judge on the facts of this case who did have, and the other facts and circumstances surrounding this man's employment. Now, that is a myth, this idea about giving the man orders. Now, the Texas Company is in the oil business, as you know. If these wells were in the State of Oklahoma, would a boat be used for parafin scraping? Now, what use, or why would The Texas Company give orders? When I asked the old gentleman, the skipper, what did his brother and the other man tell him--what did his brother tell him, he said, "He told me where to go." And, he wanted to go to Well Twenty, and what did they do after that? He sat down until they got there.

Now, this boat has been characterized as a parafin scraping boat? How do you scrape parafin with a boat? How do you use a boat in the State of Oklahoma for them to scrape parafin? That parafin scraping is merely an operation whereby you go down into the hole of the well and scrape the parafin out of it so that the oil and gas can come to the surface, and a boat is merely a means of transportation for The Texas Company employees from the base of operation to these permanent locations where oil producing wells are located. And, what does the man do when he got there? He gets up on the bank, or rather up to embankment, or wooden platform, and he does the work of an oil field worker. Does he do anything with reference

to the navigation of the boat? No sir. He is merely there so that he can get to scrape the parafin up on the platform, just as he would do in the State of Oklahoma, on dry land, if he were scraping parafin there.

We say that the purpose, the object, the reason for that boat being on that stream at all was for the purpose of transporting men to do oil field work at those particular locations. Now, you take people that probably you know, as I know, that use a taxicab service to go to work in the morning, or go wherever they go, and if it is to go or to start the working day in the morning, if you do it quite often, as you have had experience in this thing, the cab company sometimes sends the same man to your place. Now, if you tell him, "I want to go here, and after that you take me here, and then I want to go there," are you ordering him to do anything? Are you controlling him? You are merely telling him where you want to go.

Now, this poor man, the decedent, did he start that boat? Did he run that engine? Did he attempt to guide the boat? That is what I call navigating a boat. That is what I call assisting in navigating a boat, and not merely telling somebody where you are going to go, and occasionally, as the old gentleman, said, according to his testimony, and I have it here, when asked if his brother handled lines, by the Plaintiff, did he tie up, he said, "Every once in a while."

Now, we take the position simply and purely, the purpose of this boat, there is no such thing as a parafin scraping

boat. It is impossible. There is no such animal. You can characterize it a parafin scraping boat all you want, but what is that? We don't know of any such thing, and I'm sure that you don't. The boat is merely a means of bringing men to a location.

Now, gentlemen and ladies of the jury, we take the position, therefore, that one of the prerequisites, and the court will tell you, is that there must be an employee-employer relationship between the operator of the boat, the person operating the boat, and the injured employee. It does not exist in this case.

Now, secondly, and our most important point, this man was not a member of a crew of a vessel. He was a passenger getting to his place where he did his work for The Texas Company. You have the log of the services, which was admitted over Counsel's objection, as to what they do, and this one shows seven hours scraping parafin, checking chokes, and pressure on well thirteen, twenty-four, twenty-six, twenty-eight, and thirty;and one hour checking chokes and checking well twenty. That is what the men did. That is what they were employed to do. That is what The Texas Company's business is.

The business of Mr. Kennedy is to furnish a boat and a crew to get them around. Now, we say this, as to whether this man was a member of a crew of a vessel, we say that this fellow was a passenger. He had nothing to do with navigating the vessel and keeping it in navigation. He was not

primarily aboard to aid in navigation. He was primarily aboard to get to this platform, and get up there and do his work. If anyone of you went down to Grand Isle and you go to Charlie Sebastian's and you charter a boat, and you had a two-weeks' vacation, and a bunch of friends went down there and chartered the boat for two weeks, the chances are that during those two weeks you would handle a line, because all of them, and there is many down there running thirty foot boats, and you may have noticed from your own experience how many people they have on them, and once you may handle a line, and does that go to make you a seaman, a member of a crew? We think that you have to look, and we believe that the Judge will so instruct you, that you look to the purpose of that vessel. What was its purpose? Was its purpose the carrying of shells so that the man aboard who was to handle the shells aboard, would be a member of the crew, because anyone that assists in the vessel's overall work, would be a member of the crew? We say no. We say that the purpose of that vessel was transportation, and this man was injured on a platform and not in the furtherance of that purpose of transportation. We say that this man went aboard a platform to do his work, and while there he was injured doing the work of an oil field employee, which was not the basic purpose of the navigation of that vessel which was transporting the men around, and that we believe to be the crux of the case.

As to the liability, ladies and gentlemen, we say this, that in cases of this kind, and we believe that the court

will bear us out with reference to the law, that normally, unless the court instructs otherwise, the Plaintiff must prove his case with a reasonable certainty by a preponderance of the evidence. That is the basic concept.

Now, just what is known in this case? We know that Mr. Guidry was killed. We know that as well as you do. We don't like it anymore than you do, but now, just what has been shown on that witness stand, not what Counsel has told you. but it was shown that this man was our man. He was our boy. He was on that well site every two or three days. He is our man that goes out there to check it and maintain it, to keep it up. Is there any evidence that we were instructed or told by his inspection, or otherwise, that this collar in the ell was in any way dangerous?. Did we know it? Could we have ascertained it? How many times have you people taken a gas line in your house apart to determine if every joint is correct? How many time have you done that? I haven't done it at all in so far as my house is concerned. Would you be in a position to know that you have something that is confined within that valve of one of your lines that was dangerous, and should be replaced, or if we should have known it, wasn't that the man that should tell us that? He was our boy that was out there three times a week.

We believe that for us to be negligent in the premises there should be shown that we have committed some act or failed to do something which was negligent. Now, just what have we done here? Our man, who was in charge of maintaining

that particular location, goes out there to handle it, and in so doing, when he puts a wrench to it, the thing disintegrates and explodes. Again, a hidden defect, and we say, a defect that was hidden within the collar of that ell. If anybody should have known it was defective, should not he have known it? Could he have told us? If he told us and put us on our guard and we didn't fix it, we surely would be negligent.

We feel that the evidence doesn't even show who put the thing together there. It had been there for some months without any failure on its part until he handled it, and I don't say that he handled it incorrectly, but isn't he in the same position as we are to attempt to ascertain whether it was defective or not, because he was the man that would tell us that, if it was defective. Who was the one that put it together? This particular company owned it, but there is not a scintilla of evidence on that phase, as to who put that together, whether an independent contractor, or whom. We are not an insurer. It is not up to us to insure the safety of this gentleman.

That is the situation as we see it, as cold fact. You have heard it on the stand, and if you have heard who put that line together, or that The Texas Company put it on faultily, or if you have heard that he would have ascertained it by reasonable inspection and didn't, then that is one thing, but I don't believe that you have heard it. Therefore, ladies and gentlemen, I am summing up. Let it be said that in so far as The Texas Company's contentions are concerned, we contend

that the evidence in this case is to the affect that there is no employer-employee relationship existing between the decedent and the operator of the boat. We say, secondly, that he was not a member of a crew of a vessel plying in navigation, primarily aboard to aid in its navigation. We say he was primarily aboard to do work on the oil field on the fixed platforms. We say, thirdly, that there has been no proof of negligence on the part of The Texas Company, and for it to be held responsible for the hidden defects,it must be proved that he would have ascertained it with the use of due diligence, and did not do so, and I say if we were to ascertain it, and the man did ascertain it for us, it was the decedent himself, who was our man at that lake.

Thank you very much.

MR. COLEMAN:

In rebuttal there are two facts that I was just writing down that Counsel has inadvertently told you. One, he has confirmed for us, as he mentioned to you about how the captain said sometimes--the brother said sometimes, the children's father, would tie up the boat and sometimes he wouldn't. That does not conflict with what we have been telling you. That is absolutely correct when there were two men crew on that boat. Maybe he didn't do anything, but when there was a one-man crew, he did. That is the correct testimony. And, certainly, there was a two-man crew at certain times, or at least, we know at least twice a week there was, because that is what the testimony shows, and maybe more often.

Another thing, Counsel has stated to you about when he goes down to Grand Isle and that they will have one man handling a thirty-five foot boat, well, that is not what you have in front of you. The evidence shows what type of boat this is, and it is a forty-four foot lugger, according to this (indicating). There is a great deal of difference between a thirty or thirty-five foot fishing boat with which you go fishing, and a forty-four foot lugger. If there wasn't any need for the two-man crew, why did The Texas Company ask for it? Does The Texas Company just throw their money away? Do they employ two men on a crew when the boat only needs one, and one could handle it? How in the world could one man handle a forty foot lugger, go up to the platform, and then move off from one platform to the other without a great deal of assistance in tying it up while the man gets up, and untying it when he gets back on? It just isn't reasonable.

You have also heard quite an argument as to The Texas Company's complete innocence in this case, and that they are not responsible for it. The Judge will instruct you on the law that we lawyers call res ipsa loquitur--the thing speaks for itself. Our man was not negligent. It was admitted to that by The Texas Company. If there was a hidden defect they couldn't by any reasonable means find out, they have rights to bring a lot of experts in here and prove that fact to you, but it is not a matter of conjecture for you. They accepted the testimony of their own man that this accident was caused by defective threads, the man who made the investigation, and

they let it go at that. They didn't carry the burden. We carried it as far as we could in showing negligence on their part for these defective threads in the pipe-line gas pipe-line.

He says in your own home how many times have you checked the pipe--well,it is not your duty to check it, nor is it a parafin scraper's duty to check when the boss tells him to go open that line,to check whether or not the joints are tightened correctly, or whether or not there is enough threads onto it. Lord help the employees of The Texas Company if they are responsible for duties like that when they go to work out in the field. That is not the law. It is not their responsibility.

Now, these figures up on the board, these figures are based on a letter which is in the evidence, and please keep in mind that the letter says that in 1953, at the end of his sixteen years of work, in the five last weeks that Horace Guidry worked, he made $929.00, and not going back a lot of years--you just don't go backwards when you are working for a company for sixteen years, and figure what your wages were two years and three years back in determining it. The Texas Company does not reduce wages of their employees, so you take the wages of what the man was making when he died, just what are those wages? The wages that the man made when he died in 1953, the five weeks, that was $929.00. What does that mean? That means that his salary was $187.00 a week. That is what the man was making, $187.00 a week, to support the three children,

and you extend $187.00 per week and you get $9600.00 a year, and not $3800.00 as Counsel said, but three times as much, $9600.00, and he had to support that minor child until the child was twenty-one years old, seventeen and a half years, and you multiply the seventeen and a half by the $9600.00, because the younger child is entitled to support, and you spend as much on one as you do on the three--you don't stop when he gets that--I think that it takes every penny of his salary, if he is a loving father and he gives it to the children for a home, for their education, for their livelihood, and that man would have made, if he had lived, and just without any increase in his wages for the next sixteen years, if he had made this and lived up until the time that the youngest boy got to be twenty-one years old, this figure, $172,800.00. That is the figure he would have made.

Now, it is up to you to discount that, and find out if he could have saved any part of it away for himself, and find out if he used it, or how much of that amount he would use to support his family.

THE COURT:

You have one minute.

MR. COLEMAN:

We have covered our case, thank you, your Honor.

o-o-o-o

JUDGE'S CHARGE

LADIES AND GENTLEMEN:

You have heard all of the witnesses and the evidence to which they have testified. You have heard the argument of both sides, and now it becomes my duty to define the law applicable to the facts of this case, the facts as you find them in the evidence, and to instruct you as to the rules of law that you are to consider and by which you are to be controlled in weighing and construing the testimony. It is for you, and you alone, to determine what the facts are. It is for the Court and the Court alone, to define the law by which these facts are to be applied in the instant case. If, perchance, you shall have imagined or gained the impression at any time during this trial that the Court has any opinion respecting what may or may not be a fact in this case, you will still remember that the Court's conclusion is in no sense to weigh with you or to control you in your findings and determination of what the facts really are. If, during this charge, it seems to you that emphasis is laid or not laid upon some fact, pay no attention to such an impression, because it is not my purpose to create it.

I trust you will not handicap your consideration of this case by any apprehension that it will be difficult for you to understand it, or to apply the facts as you find them to the law as I shall give it to you. I think you do understand the case, and if you do not, I am sure that you will when such additional light as is needed is given you by this charge. You

must remember that you are to look at the facts and apply the law to them as given you by the Court exactly as you would look at other important concerns affecting yourselves. You should approach the consideration of the whole case with a confidence that you will arrive at a conclusion satisfactory to your judgment and to your conscience, precisely as you are satisfied that you will arrive at a like conclusion in any important matter of your own after you have given it full and careful consideration.

There are no distinctions to be drawn in this case so fine that the ordinary man or woman cannot apprehend them, nor are there any mysterious processes, either of reasoning or of legal procedure, which you need fear will cloud your inquiry or interefere with your arriving at a perfectly intelligent conclusion. The questions here are practicall questions for you to decide, and all that is needed is that you give your vesy best attention to this consideration.

There are, however, certain limitations which are put upon you. You have no right to consider anything which we have not heard in the Jury box. If you permit yourselves to be influenced in any way by considerations which have not come before you here, you run a danger of doing a great injustice to one side or the other.

There is another consideration which it is proper for me to refer to in this connection. You must distinguish between the arguments of Counsel which are made before you, and the evidence upon which those arguments rest. The repetition

of an argument, however often, does not constitute evidence. You must carefully analyze the assertions which are made to you by either side, and see what basis those assertions have in the evidence. If you will, therefore, not assume anything to be true which has not been proved and if you will carefully see to it that all the conclusions that you make have some basis in the evidence which you have heard here, you will be doing your duty; but if, on the other hand, you draw inferences from any questions which have been ruled out, or from any question which has been answered more than has been answered, you will run a risk of real injustice.

There are some general principles of law which are of importance in every Civil case, and I shall first say a word to you about this.

The law imposes the burden of proof on one party or the other in all cases. In a Civil action such as this, the present case, the burden of proof is upon the Plaintiff to prove the justice of his claim by a fair preponderance of the evidence, and by a fair preponderance of the evidence is meant that evidence which has the greater weight, that evidence which best accords with reason and probability.

The machinery of trial calls for the exercise of varying functions by Counsel, by the witnesses, by the Court, and by the Jury. As the Jury, you exercise two important and exclusive functions. First, as you have been told, you are the sole judges of the facts. That is to say, it is you who must consider the evidence, weigh the evidence, and draw inferences

from the evidence, but only from the evidence.

Secondly, you exercise the exclusive function of passing upon the credibility of the witnesses. You can see that this is a very important function, because to determine where the truth lies you must, of necessity, decide who is telling the truth.

In weighing the testimony and in determining the credibility of the witness, the Jury may, among other things, consider the manner and demeanor on the witness stand, his feelings, his interest, his prejudice or bias,if any; whether he has a purpose or interest to serve which may color his testimony; his means of knowing what he has testified to; the probability or improbability of his testimony; the consistency or inconsistency of his statements, and with the other facts proved in the case, the reasonableness or unreasonableness of his testimony considered in the light of circumstances surrounding that testimony, including whether or not he has been contradicted by other credible evidence, and whether or not he has made statements at other times and places contrary to those made on the witness stand. The Jury is not bound to believe unreasonable statements just because they are sworn to, for we know that anyone can swear to anything if he has the will to do so.

The credibility of the witnesses and the weight of their evidence are matters solely for your determination. The Court cannot help you in this. You are the exclusive judges in determining where the truth lies.

This brings us directly to the consideration of the facts and issues which this case presents.

This suit is based on the Jones Act. The Jones Act is an act of Congress of the United States which gives a recovery to seamen against their employers when a seaman is hurt through his work for his employer, and through the negligence of his employer. Before a person can recover under the Jones Act, he must, of course, establish his status as a seaman, and that status question presents the primary issue in this case. Was the decedent, Horace Guidry, a seaman employed by the Texas Company, who was operating the boat, and the question is whether or not he was operating and controlling the boat upon which he was delivered, on which he served from one platform to another in Lake Salvador in connection with the Texas Company lease.

Now, in order to make these instructions less confusing, the Court is going to give you the special requests which have been requested by Counsel, after which the Court will give its charge, the balance of its charge on the issues which this particular case presents.

We will take up the charges by the Plaintiff first.

Charge Number One for the Plaintiff: A seaman has been defined broadly as a person whose occupation is to assist in the management of vessels at sea. Although the term originally included only common sailors, the status and rights of seamen, under the ruling of American Courts, from time to time have been extended to persons performing maritime services of

various sorts, such as mates, pilots, pursers, surgeons, stewards, engineers, cooks, clerks, carpenters, firemen, deck hands, porters, chambermaids, seal hunters and fishermen on sealing and fishing vessels, and in general, all hands employed on the vessel in furtherance of the main object of the enterprise in which she is engaged. Briefly, you should determine in this case, and this is still a charge requested by the Plaintiff, if Mr. Guidry had a more or less permanent connection with the vessel Mary Virginia. Then you should determine if the Mary Virginia was a vessel in navigation, but that does not mean the vessel had to be plying the water at the exact moment of the injury.

Finally, you consider if Mr. Guidry was aboard the Mary Virginia primarily to aid in its navigation. You don't have to find that he was aboard at the exact moment of this occurrence. Aiding in navigation is not confined to those who hand, reef and steer, but applies to all whose duties contribute to the operation and welfare of the vessel.

If you should find that parafin scraping was the main object of the service of the Mary Virginia and that the decedent, Mr. Guidry, was aboard the vessel in furtherance of parafin scraping and that his duties contribute to the operation and welfare of the vessel, and you have previously determined in the affirmative the question of his permanent connection with the vessel, and its being in navigation, then you should find Mr. Guidry to be a seaman within the meaning of the Jones Act.

The fact that the decedent was not classified by his employer as a seaman will not bar his being classified as a seaman under the Jones Act.

These are factors which you should consider in deciding this question, bearing in mind that the Plaintiff must show himself to be a seaman by a preponderance of the evidence, but that a liberal construction of terms should be adopted in favor of the decedent. If your answer to the instant question is "no", then you need not go on to the following points which I shall discuss and you must render a judgment for the Defendant. If your answer to this question is "yes", then you should proceed to the next question.

Number Two for the Plaintiff is refused.

Number Three is refused.

Number Four is refused.

Number Five is refused.

Some of these refusals may be based on the fact that they are already covered.

Number Six is refused.

Number Seven for the Plaintiff: If you find that the normal crew on the boat of the type of the Mary Virginia was two men, and that in fact the Mary Virginia itself normally or one some days had a two-man crew aboard, but that on the day of this accident there was only a one-man crew on board the vessel, and the duties of the extra crew man were filled by Horace Guidry and Harold Badeaux, then you may consider this circumstance, among others, as determining whether or not

Mr. Guidry was a seaman under the Jones Act.

Number Eight is refused.

Number Nine is refused.

Number Ten is refused.

Number One as requested by the Defendant in the case: For the Plaintiff to recover from the Defendant under the Jones Act, it is necessary that Plaintiff establish an employer-employee relationship between Guidry, the decedent, and the boat operator, and Plaintiff must prove, further, that the Texas Company actually operated and controlled said boat under a charter.

Number Two for the Defendant: To determine whether the boat operator was in the employ of the Texas Company or in the employ of the owner of said vessel, one of the tests which may be employed is whether the owner or the Texas Company hired and fired the personnel aboard the vessel, and whether or not said owner or said company had control over its navigation.

Number Three for the Defendant is refused.

Number Four for the Defendant: In the event that you find that decedent was a member of the crew of the instant vessel and entitled to claim Jones Act recovery against his employer, you must then determine, as a prerequisite of recovery under said Act, that the decedent, while working on the instant platform was carrying out the ship's business and furnishing services which related to the operation of the vessel and in furtherance of its navigation.

Number Five for the Defendant: For decedent's representatives to recover under the Jones Act, they must prove (one)

that decedent was employed aboard a vessel; (two) that the vessel was in navigation; (three) that decedent had a more or less permanent connection with the vessel, and (four) that the decedent was aboard primarily to aid in navigation.

Number Six for the Defendant: Defendant is not negligent in not discovering the existence of a latent or hidden defect, unless it is proved that the defect could have been ascertained by a reasonable inspection.

Now, getting back to the Court's charge, a seaman is generally defined as a person more or less permanently attached to a vessel plying in navigable waters. In applying this definition, the Courts have held that anyone whose labor contributes to the accomplishment of the purpose or work in which the vessel is engaged may be a seaman. For example, engineers, cooks, and even musicians have been held to be seamen, where their work contributes to the total function of the vessel. A man aboard a dredge boat, a man aboard a boat used in mixing concrete have likewise been held to be seamen, so that the type of work performed aboard the vessel is not necessarily determinative. The more or less permanent attachment to the vessel, while contributing to the total function of the vessel, determines the status of seamen.

You are further charged that the right of recovery under the Jones Act does not depend on the place where the injury is inflicted or the death occurs, but upon the nature on the service which is being rendered by the injured party, and the relationship of that service to the operation of the vessel plying in navigable waters.

In order to simplify the case for the Jury's consideration, the Court will ask the Jury to answer questions concerning facts which this case presents. The first question will be: Was the Mary Virginia operated and controlled by the Texas Company? You will answer that question yes or no. In answering this question, while such considerations as the right to hire and fire employees concerned with the vessel may be considered, the primary consideration is who managed and controlled the vessel in relation to its internal administration, and in the relationship between the vessel and its crew? In other words, the control to be considered in answering the question relates to the internal operation and navigation of the vessel as distinguished from direction of the vessel as to places of call, places where it may stop.

The second question is: Was Horace Guidry a member of the crew of the vessel? In answering this question, the crucial considerations are, was he employed aboard the vessel, was the vessel in navigation, did he have a more or less permanent connection with the vessel, and was he aboard the vessel primarily to aid in its total function as a vessel?

The third question is: If so, was the work in which he was engaged at the time of his death pursuant to his employment as a member of the crew of the Mary Virginia? In other words, at the time he was killed at the valve on the platform, was that pursuant to his employment as a member of the crew of the vessel? The prime consideration here is whether the Mary Virginia was primarily a water taxi or whether the crew of

the vessel and the vessel itself were so integrated in the work to be performed on the various platforms in Lake Salvador by the decedent and his co-workers that that work on the platform became part of the total function of the vessel as a vessel, In other words, the fact that the decedent was killed while on the platform and not while he was aboard the vessel does not bar his recovery. The question is whether his work on that platform was in the service of the vessel.

The fourth question is: If so, was his death proximately caused by the negligence of the Defendant or its agents?

Now, negligence, as the term is used, may be defined as the failure to do that which a person of ordinary prudence and intelligence would do under the same or similar circumstances, or the doing of that which a person of ordinary prudence and intelligence would not do under the same or similar circumstances. Negligence is the failure to use ordinary and reasonable care, and ordinary and reasonable care is that degree of care which the average prudent person would exercise under the facts and circumstances proved in this case. I charge you further that negligence is actionable in law only when it is the proximate cause of the injury received. That is to say, where negligence proceeds in an unbroken chain without independent intervening cause up to the point of inflicting the injury or damage. That is merely a technical definition of proximate cause. What it means is that the law takes no cognizance of negligence which is remote to the incident or damage or injury. It is only that negligence which actively

precipitates the incident, the damage or the injury which the law recognizes and gives recovery for.

In this connection, there is evidence that the thread on one of the pipes was stripped, and that that fault in the pipe caused the explosion which resulted in the death of Horace Guidry. If you so find, and further find that the decedent, Horace Guidry, was free from fault in connection with the conditions or cause of his death, then an inference of negligence against the Defendant arises from the fact of the defect in the pipe.

In answering this question, that is, whether or not the negligence of the Defendant caused the death of the decedent, you may consider whether the Defendant has overcome the inference of negligence, if you find that such has arisen from the facts of this case.

The fifth question is: If so, was Horace Guidry guilty of contributory negligence? The Defendant in this case, in addition to denying its own ngeligence and, of course, denying the status of Horace Guidry is a seaman, has pled contributory negligence. Now, negligence for the Plaintiff is the same as negligence for the Defendant; the same definition for one applies to the other. The burden of proving contributory negligence, however, is on the Defendant, just as the burden of proving negligence on the part of the Defendant is on the Plaintiff. Now, the fact that the Defendant may be successful in proving contributory negligence does not bar recovery in this case. Contributory negligence, under the Jones Act, merely

diminishes the amount of recovery which may be attributable to the extent that the injury may be attributable to that contributory negligence. For example, on the basis of one hundred percent, if you find that there was fifty percent negligence causing this injury on the part of the Texas Company, and fifty percent contributory negligence on the part of the decedent causing this injury, then the amount of recovery which ordinarily would have been had, instead of being total, would be diminished by fifty percent. Of course, I used fifty percent merely as an illustration.

Now, the sixth question is: If so, state the award the Plaintiff should receive in this case. Now, the Plaintiff here, as the law requires, that is, the Jones Act requires, is the administratrix of the estate of the deceased. She asks recovery for his death in her capacity as administratrix. In considering the amount of award which should be made in this case, if you decide that an award should be made, you must determine what the heirs of the decedent, his three children, could reasonably have expected to have received from him during their minority, beginning from the date of his death. In this case no claim is made in behalf of the widow. Claim only is made for the decedent's three children. In arriving at this award you will decide what amount they, the three children, could reasonably have expected to receive from their father during the period of their minority. Since the life expectancy of the decedent at the time of his death exceeds the minority years of the youngest child, the full minority period of each child may be considered.

In arriving at an award it is not enough merely to multiply the decedent's annual earnings by the number of years of minority of the children. You must remember that these children could not, of course, expect to receive the entire earnings of their father. You must also consider that as each child arrives at majority, that child must no longer figure in your calculations, or in your considerations. In other words, as the child becomes twenty-one, he is no longer considered in determining an award, and then that leaves only two, and then the next one comes up to twenty-one, and then only one should be considered.

You must realize that the earning power of the father may increase or decrease during the period in question, that is, the minority of the children and, further, that as men who do physical labor grow older, their income very often decreases. In any event, you must discount at a reasonable rate, from four to six percent, for example, any award which you make, for we know that the value of money to be earned in the future must be discounted to the date it is received when that date is earlier than the one on which it would normally be received. You must also realize that the award is tax-free, whereas the earnings of the decedent were not.

In sum, the question of quantum is not subject to precise mathematical calculation. It is a question which, like the other issues in this case, you must decide as reasonable men and women with reasonable knowledge of the facts of life.

Now, with reference to questions one, two, three, and

four, and you will see the questions on the verdict form that is presented to you, the burden is upon the Plaintiff to prove the affirmative of these questions, in other words, to prove that questions one, two, three, and four should be answered yes, the burden is on the Plaintiff. With reference to five, the one with reference to contributory negligence, the burden there is on the Defendant, since that is a defense of the case. With reference to six, the question of quantum, that also must be proved to your satisfaction by a preponderance of the evidence by the Plaintiff in the case. So the burden of proof by preponderance of the evidence as to questions one, two, three, and four is on the Plaintiff. It is the Plaintiff who has the burden of proving that the questions must be answered yes. If the Plaintiff fails, in your judgment, in carrying that burden, those questions must be answered no, or whichever questions have not been proved to your satisfaction by a preponderance of the evidence, must be answered no.

And, the same instructions go as to five, and six; as I said, must be proved by the Plaintiff. He has the burden.

All twelve of you must agree whichever way you find. Your verdict must be unanimous. When you retire, you will select your own foreman and your verdict will be dated and signed by the foreman whom you select.

The Jury may now retire.

(Jury retires at 12:05).

THE COURT:

I think the Jury or one of the Jurors asked for one of the

documents inthe case.

MR. THOMSON:

That was five, the contract.

THE COURT:

Are there any objections?

MR. CARRERE:

No objections.

MR. THOMSON:

No objections.

THE COURT:

By agreement of Counsel the court will receive exceptions to the court's charge, it being understood that the exceptions were made before the jury was retired.

We will take the Plaintiff's exceptions first.

MR. THOMSON:

Your Honor, we are not quite ready--

THE COURT:

We will take the Defendant now.

MR. CARRERE:

The Defendant objects to the Plaintiff's request charge Number One as written, and particularly to the last paragraph on the first page which states, "If you find that parafin scraping was the main object of the enterprise of the Mary Virginia--for the reason that said statement is broad and subject to interpretations; whereas, we believe that the test is whether the Mary Virginia was a vessel in navigation, and which directly related to parafin scraping, and as contrasted to merely

being a mode of transportation to the platform where oil field work is being carried out. We further object to the last paragraph of said charge which states that a liberal construction of the term should be adopted in favor of the decedent. We believe that the test is that Plaintiff must prove the status in accordance with the accepted general law, that proof being made by a preponderance of the evidence.

THE COURT:

The court in the instructions to the jury did not use the word "enterprise," but did use the word "service" in lieu thereof.

MR. CARRERE:

That is right, but we believe that nevertheless this charge is objectionable for the reason that on the one hand the jury is asked to determine if this man is a seaman and member of a crew of a vessel by determining if parafin scraping is a service of a vessel, and then, on the other hand, the jury is asked to determine when he is actually engaged in parafin scraping aboard that platform, if that parafain scraping is in connection with the service on the vessel, which conclusion seems to be inconsistent to us, inasmuch as one premise is concluded on the second finding, and a second premise is concluded on the first finding.

The Defendant objects to the special charge Number Seven for the reason that we don't believe that the body of law interpreting the Jones Act by jurisprudence is to the effect that what a man happened to be doing on a specific day is the

main or primary determinative as to whether or not he is a member of the crew of a vessel.

THE COURT:

The court didn't give that charge.

MR. CARRERE:

You gave it as modified, your Honor. You said, "In conjunction with other facts."

THE COURT

I gave Number Seven, but I didn't give Number Two.

MR. CARRERE:

I think I said Number Seven. This is Number Seven. You did not give Number Two.

The objectionable features, as we see it in this charge is that, for example, a man may be sent aboard a vessel from the general employer, of an employer, and may perform on one day an incidental task relating to work normally done by a seaman, and have that singular incident made determinative of whether or not he is a seaman or a member of a crew of that vessel.

We except with reference to the general charges given by the court to the jury in setting forth the single element in determining whether or not a man is a member of the crew, the court mentioned the fundamental concept of the McKie and the Carumbo cases, such as he must employed aboard a vessel in navigable waters, and so forth, and as to one of the last elements in determining that question the court raised the question, was the vessel a water-taxi, and, on the other hand,

was the work of the vessel so integrated that the work on the platform became the work of the vessel. This is not intended to be a verbatim quote, but we believe that this is objectionable for the same reasons as mentioned with reference to Number One above, that on one occasion the determining feature as to whether or not the man is a seaman is to determine what his overall work is; and then, after he leaves the vessel, you are taking that same work in determining then if it is the vessel's work.

With reference to the general charge, we object to the charge of inference of negligence arising if the jury finds that the threads on the riser were defective, for the specific reason that no foundation was laid as to whom had constructed this pipe-line; for example, The Texas Company or an independent contractor, and, that, therefore, The Texas Company merely as an owner, under these circumstances, could not be brought under the doctrine res ipsa loquitur, specifically in view of the fact that at the time of the accident The Texas Company exercised no control over the instrumentality, and was present only in that the decedent himself, who had whatever control was had at the time, was The Texas Company's man in this operation.

MR. CARRERE:

Thank you, your Honor. I think that is all.

THE COURT:

All right, sir. Now by the Plaintiff.

MR. THOMSON:

The Plaintiff has no exceptions to the instructions.

THE COURT:

All right. We will stand at recess.

(Short recess.)

(Jury returns at 1:00 o'clock.)

THE COURT:

Ladies and gentlemen, have you reached a verdict?

THE FOREMAN:

We have, your Honor.

THE COURT:

Receive the verdict.

(Verdict handed to the court.)

THE COURT:

Read the verdict.

THE CLERK:

In the case of Mr. Marowigne Edna McConnell Savoie, Administratrix, versus The Texas Company, Number 5288, Civil Action, Verdict: "Was the Mary Virginia operated and controlled by The Texas Company? Yes.

"If so, was Horace Guidry a member of the crew of that vessel? Yes.

"If so, was the work in which he was engaged at the time of his death pursuant to his employment as a member of the crew of the Mary Virginia? Yes.

"If so, was his death proximately caused by the negligence of the Defendant or its agents? Yes.

"If so, was Horace Guidry guilty of contributory negligence?" I don't make out what that is--it is "No."

State the award the Plaintiff should receive in this case. $80,000.00." Signed: Walker Saussy, Foreman, March 20, 1956.

THE COURT:

Is that your verdict ladies and gentlemen?

(The Jury answered, yes, this was their verdict.)

THE COURT:

Let the verdict of the jury be recorded, and the jury will be excused subject to call.

The court stands at recess.

(Court recessed.)

o-o-o-o-o

REPORTER'S CERTIFICATE

The undersigned certifies, in his capacity of Official Court Reporter for the United States District Court, Eastern District of Louisiana, the foregoing to be a true and correct transcription of his Stenograph notes taken during the proceedings in the abovenumbered and titled case on the 19th and 20th days of March 1956.

New Orleans, Louisiana, this 12th day of April, 1956.

s/ Vidal G. Apodaca
Vidal G. Apodaca
Official Court Reporter

...ooOoo...

J U D G M E N T

Minute Entry March 20th, 1956 Wright, J:
(Number and title omitted)

By reason of the verdict of the jury rendered herein, and in accordance therewith;

IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT that judgment be and is hereby entered in favor of Plaintiff, MRS. MAROWIGNE EDNA McCONNELL SAVOIE, Administratrix of the estate of Horace P. Guidry, and against defendant, The Texas Company, in the full and true sum of Eighty Thousand & no/100 ($80,000.00) Dollars, together with legal interest and costs.

J.S.W.

...ooOoo...

MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND, IN THE ALTERNATIVE, FOR A NEW TRIAL and MOTION FOR A NEW TRIAL AND, IN THE ALTERNATIVE, FURTHER, FOR A REMITTITUR

(Number and title omitted) (Filed: March 29, 1956)

The Texas Company, defendant, moves for a judgment, notwithstanding the verdict of the jury entered herein, on the following grounds:

1. Plaintiff has failed to prove that an employer-employee relationship existed between The Texas Company and the operator of the vessel, "Mary Virginia".

2. The decedent was not a member of the crew of the "Mary Virginia" and there is no evidence in the record upon which a jury could predicate a finding that he was a member of the crew of said vessel.

3. Alternatively, in the event that the jury was correct

in determining that the prerequisite employer-employee relationship did exist, and that decedent was a member of the crew of the "Mary Virginia", the law and all of the facts submitted to the jury, by way of evidence, are in favor of the defendant, to prove that the work which decedent was doing at the time of his death was in pursuance of his employment by The Texas Company as a roustabout and had no relationship whatever to the operation of the vessel plying in navigable waters. O'Donnell vs. Great Lakes Dredge & Dock Co., 318 U.S. 488.

4. The Plaintiff has failed to prove, by credible evidence, and, in fact, by any evidence whatever, that The Texas Company was guilty of any negligence whatever in the premises, the Court is in error in charging the jury that an inference of negligence arose as a result of Porter's testimony that "in his opinion" the threads on the riser were not deep enough. Further, with regard to this submitted reason for judgment, notwithstanding the verdict, defendant avers that (1) at the time of the accident, The Texas Company had no control over the instrumentality, and, in fact, the decedent had full control over it, and (2) the doctrine of res ipsa loquitur is not proof and does not supply a lack of proof on the part of the plaintiff. There is no credible evidence in this record to support the allegation of negligence on the part of the Texas Company.

5. There is no evidence in the record whatever to prove that The Texas Company could have discovered the existence of the latent or hidden defect by reasonable inspection, and, in fact, the only evidence in the record is to the effect that a

pipe had been in place for several months, there had been no previous trouble with it, and the defect, if it did exist, could not have been determined except by dismanteling the entire installation.

In the alternative, The Texas Company moves for a new trial, on the following grounds:

1. The verdict is unreasonable and grossly excessive in amount, and was arrived at without adequate consideration, in point of time, by the jury that answered the perplexing questions submitted by the Court and arrived at the verdict in less than one hours' time, all of which, defendant submits, has brought about an unjustifiable result in the instant case, which is contrary to the law and the evidence and should be the subject of a new trial, in the sound discretion of the Court.

2. On rebuttal only, plaintiff urged that the decedent was a nine thousand dollars ($9,000.00) a year man to the jury, on the basis that decedent received nine hundred, twenty-nine and no/100 ($929.00) Dollars in salary in the year of his death, which amount, projected over the year, would attain that annual income, In fact, plaintiff was furnished, and retained during the entire trial, a complete statement of decedent's earnings, which shows that of said amount Two hundred, Twenty-four and 40/100 ($224.40) Dollars was paid to him in lieu of a vacation, and that his rate of pay remained the same as in the previous year.

Alternatively, further, The Texas Company moves for a remittitur, on the grounds that under the Jones Act, the minor

children are entitled to receive a verdict for the support which they could normally expect to receive from the father during minority, discounted at the current rate, not to exceed six per cent (6%). The verdict is grossly excessive and should be remitted to Twenty-eight Thousand, Five hundred and no/100 ($28,500.00) Dollars.

MAY & CARRERE

BY: S/ E. A. Carrere, Jr.
Ernest A. Carrere, Jr.
Attorneys for Defendant,
The Texas Company,
409 California Building
New Orleans 12, Louisiana

...ooOoo...

MEMORANDUM IN SUPPORT OF MOTIONS

(Number and title omitted)

May it Please the Court:

The Texas Company submits, herewith, its argument and authorities relative to the Motions filed herein for a judgment notwithstanding the verdict, alternatively, for a new trial and alternatively, further, for a remittitur.

The decedent has been found by a jury to have been a seaman and member of the crew of the "Mary Virginia", entitled, as such, to recover under the Jones Act against his employer, The Texas Company, notwithstanding the fact that his accident occurred on a platform while he was performing roustabout work for said Company.

The verdict was in the amount of Eighty Thousand and No/100 ($80,000.00) Dollars, which the defendant contends is grossly excessive in the light of the provisions of the Jones

Act and the jurisprudence interpreting said Act.

AS A PREREQUISITE FOR RECOVERY UNDER THE JONES ACT, PLAINTIFF MUST PROVE EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN DECEDENT AND THE OPERATOR OF THE VESSEL.

The first step, which plaintiff must overcome in order to bring the instant case under the Jones Act, is to prove that an employer-employee relationship existed between the boat operator and The Texas Company. Southern Shell Fish Co., Inc. vs. Plaisance (1952) Fifth Circuit, 196 F. 2d 312; The Norland, 101 F. 2d 976; Cromwell vs. Slaney, 65 F. 2d 940,941; Robinson vs. B. & O. Ry. Co., 237 U.S. 84; Hull vs. Philadelphia & R. Ry. Co., 252 U.S. 475.

As the Court indicated, and as we contend, the burden is on the plaintiff to prove this status.

We respectfully submit that plaintiff has not discharged the burden and that there is no evidence in the record upon which the jury could have found for plaintiff in this respect.

The boat contract between The Texas Company and John V. Kennedy, owner of the "Mary Virginia", is in the record as "Defendant 1".

Under the terms of the contract, John V. Kennedy agreed to furnish the crew at his sole cost and expense, and it was understood that he would have "complete charge and control of the boat or boats at all times".

Kennedy also agreed to have the boat maintained in good condition and to keep it in readiness "fully manned".

This contract is prima facia proof of the relationship between Kennedy and his employees and The Texas Company, which

has not been overcome or altered by proof submitted by the plaintiff.

According to the record, Guidry, the Captain of the vessel, testified that he was hired by Kennedy at his brother's suggestion.

He stated that he was paid his salary by check of Mr. Kennedy. He testified, definitely, that he operated the vessel and he specifically stated that he started the engine whenever it was required to be started and that he alone steered and maneuvered the vessel.

There is no showing whatever that the decedent or anyone else other than Kennedy's employees ever tampered with the engine on this vessel or steered or maneuvered it in any way.

When asked if the decedent ever handled a line aboard the vessel to tie it up, the Captain's answer was "every once in a while."

The plaintiff attempted to bring out, from this witness, the fact that he accepted his orders from the decedent. However, on cross-examination, it was definitely brought out that what he meant by accepting orders from "Horace" was that "Horace" told him where he wanted to go.

He and Paul Badeaux both testified that the decedent, Guidry, and Badeaux rode from one location to another and did nothing with reference to the operation of the boat while the boat was traveling from one location to another.

The said Badeaux also testified that he and the decedent definitely were not employed to handle line.

It is submitted that if the decedent or Badeaux did handle lines, it was merely as a courtesy to the vessel and was not a part of their employment by The Texas Company.

Further, any activity that either of these men had aboard the vessel was not such as to evidence a domination and control over the vessel, so as to make the boat Skipper a servant of their employer.

An attempt was made to show that decedent used ship's tools on the platform, but the Captain denied this and stated that the wrench used at the time of the accident was not ship's property and that it was the wrench of the roustabouts, who were passengers on the vessel. Here, again, this element of the case is not relevant to the control issue.

We submit that the only evidence proves that the vessel was used to transport roustabouts to locations of various wells in Lake Salvador under independent contract between Kennedy and The Texas Company.

Further, plaintiff has not proved any control in the operation and navigation of that vessel by The Texas Company, so as to make the boat Captain the employee pro Hac Vice of The Texas Company.

THERE IS NO EVIDENCE IN THE RECORD WHICH PROVES THAT THE DECEDENT WAS A MEMBER OF THE CREW OF THE "MARY VIRGINIA".

The Texas Company denies that an employer-employee relationship has been established between The Texas Company and the operator of the "Mary Virginia."

Assuming, for purposes of argument, that the jury correctly

found that that status did exist, The Texas Company then contends that there is no evidence which proves that decedent was "a member of the crew" of that vessel.

Under the doctrine of Carumbo vs. Cape Cod SS Co., (1941). 123 F. 2d 991, Wilkes vs. Mississippi River Sand and Gravel Co., (1953),202 F.2d 383, certiorari denied, 346 U.S. 817, 74 S.Ct. 29, and McKie vs. Diamond Marine Co., (1953), 204 F.2d 132, a plaintiff, or plaintiff's representatives, to recover under the Jones Act, must prove that the alleged member of the crew, first, was employed aboard a vessel; second, that the vessel was in navigation; third, that the alleged member of the crew had a more or less permanent connection with the ship, and, fourth, that he was aboard primarily to aid in navigation. Plaintiff's failure to prove any one requirement is fatal to his cause.

Guidry, the decedent, was not employed aboard the instant vessel.

The "Mary Virginia" was a lugger, which required a crew of one man to operate it.

Louisiana Cajuns have operated luggers as a one man crew in inland waters since the advent of that type of vessel.

Men such as the Captain in this case have handled such vessels from boyhood as a matter of second nature.

The Skipper required no assistance other than the occasional handling of a line which was done as a matter of courtesy by whomever happened to be aboard, and, certainly, The Texas Company did not hire Guidry, the decedent, Badeaux, Hatty and other roustabouts, who used the "Mary Vinginia", to be employed

aboard that vessel in the operation of said vessel.

The record contains defendant's Exhibit B, which shows, from the work cards, the jobs performed by the decedent, from November 1, 1952, to January 31, 1953. For the Court's ready reference, we annex a summary of that information, which shows that the decedent was employed as a roustabout and actually only did work of a roustabout, day in and day out. He scraped parafin from the wells, checked chokes and pressures and maintained the equipment. That was his job; that was the purpose for which he was employed, and the only work that he did do.

The basic decision of Chicago Coal and Dock Company vs. Bassett, 309 U. S. 544, 549, held:

> "These duties, as the Court of Appeals said, did not pertain to navigation, aside from the incidental task of throwing the ship's rope or making the boat fast, a service of the sort which could readily be performed or aided by a harbor-worker."

The Bassett case in the case which laid down the law that whether or not a man is a member of the crew is a question of fact for the jury. It also specifically held that the handling of a line is not a determining factor in deciding whether or not a man is a member of a crew. It follows, Therefore, that the mere showing by plaintiff that decedent occasionally handled a line is not sufficient evidence upon which a jury may find that decedent was a member of a crew.

There is no other evidence in the record upon which to find that decedent was a member of the crew aboard the "Mary Vinginia", and, therefore, the jury is in error and its error should be corrected by this Honorable Court, under the doctrine of

Wilkes vs. Mississippi River Sand & Gravel Co., (1953), Sixth Circuit, 202 F.2d 383, certiorari denied, 346 U.S. 813, 74 S.Ct. 29, (this case was cited by the Supreme Court in Martin vs. The Texas Company), which held:

> " * * * * In short, a Commissioner's conclusion that one is or is not 'A master or member of a crew' is not binding upon a reviewing Court if the basic facts competently found by the Commissioner rightly call for a different conclusion. In Schantz v. American Dredging Co., 3 Cir., 138 F.2d 534, 536, after quoting from Warner Co. V. Norton, Supra, Judge Goodrich said: 'The same rule will apply to findings of Judge or Jury when the plaintiff's effort is to escape the Longshoremen's Act, rather than to get under it, and the litigation is a law suit instead of an application for compensation'."

Further, with reference to determining decedent's status, we contend that the decedent did not have a more or less permanent connection with the ship.

Decedent's use of the "Mary Vinginia" was restricted to his travel from one well to the other inasmuch as a water taxi was necessary to bring him to such locations in the pursuance of his duties on the various platforms.

He was not aboard this ship as a permanent member of the crew "to forward her enterprise and to protect her in an emergency, with a right to look to the ship for his wages". Further, he was not subject to the orders of a Captain aboard said ship. He was aboard only for transportation purposes and when that particular vessel was not available, another vessel would be provided to carry him to his various platforms.

It is submitted that permanent attachment has not been

proved in any way whatsoever, under the doctrine of Maryland Casualty Co. vs. Lawson, 94 F. 2d 190 and Zeinteck vs. Reading Company, 222 F.2d 183 (Certiorari denied, U.S.).

Still further, how can it be said that decedent was aboard the "Mary Virginia" primarily to aid in navigation? He had nothing whatever to do with navigation. The occasional handling of a line, considered alone, cannot brand decedent as a member of the crew of that vessel when, in fact, it is shown that all of his work for The Texas Company was done on the well platforms.

What scintilla of evidence is there in the record to indicate that the decedent was aboard primarily to aid in navigation?

We submit that there is not one parcel of evidence upon which to predicate such a finding.

We conclude, therefore, that decedent was not aboard primarily to aid in navigation; that the jury is in error, and that its findings should be corrected by this Court under the doctrine of the Wilkes case, supra.

AT THE TIME OF THE ACCIDENT, DECEDENT WAS NOT RENDERING SERVICE RELATING TO THE OPERATION OF THE "MARY VIRGINIA"

We respectfully submit that the argument of plaintiff is illogical, unjustifiable, and, if allowed to prevail, will bring about an inequitable result in this case.

Plaintiff contends that the "Mary Virginia" was a "parafin scraping vessel" because it carried parafin scrapers to the various well platforms; that decedent was a member of a crew of such parafin scraping vessel; that when decedent left the ship and went upon the well platform to carry out his roustabout

duties and to check pressure in a gas pipeline, he was carrying out the work of a parafin scraper, and, therefore, that he was carrying out the ship's work, inasmuch as the ship was a "parafin scraping ship".

We respectfully submit that such argument is unreasonable and illogical.

The "Mary Virginia" is a common, ordinary lugger. It has no special equipment, no tools, no carrying capacity for cargo and no use to The Texas Company other than to transport its roustabouts to well locations.

This is not the situation, previously passed upon by the Supreme Court and the various United States Courts of Appeals, which has led to the holding that anyone aboard a vessel, who contributes to the vessel's main purpose, is a member of the crew, regardless of whether he be Captain, first mate, wine steward or shell handler.

We acknowledge that principle and we acknowledge that a man aboard a barge, for example, who does nothing but measure the shell cargo of that barge, is contributing to the primary purpose for which the vessel is in navigation. But, how can that well-recognized principle be applied to this case, in light of the classification and construction of the "Mary Virginia"?

Assume, for purposes of argument, that decedent could be found reasonably to have been a member of the crew of the "Mary Virginia". Even then, there is absolutely no showing whatever that the "Mary Virginia" had any purpose, function or use whatever, other than to transport roustabouts.

How, then, can a jury reasonably find that doing the checking and testing of a pipeline on the platform was so integrally connected with the vessel's work as to make it a part thereof?

How can it be found, in reason and justice, that there was a relationship between the work being done by Guidry at the time of the accident and the operation of the vessel plying in navigable waters?

The distinction, which we urge, was made in the case of Hovland vs Fearnley & Eger, Et Al, 110 F. Sup. 657. This is a District Court case, and its holding is logical and reasonable:

> "One can go so far as to say that if the injury results from an act of any of the vessel's personnel in the course of operating the vessel, rather than in the course of doing something which involves the vessel, jurisdiction could be sustained, even though the vessel itself is not an instrumentality in bringing about the accident."
> (Underscore supplied)

The accident in this case was not brought about by the vessel, it was not brought about by the purpose for which the vessel was being operated, and, in fact, had no connection with the vessel's operation.

This is not a proper extension of O'Donnell vs. Great Lakes Dredge & Dock Co., 318 U.S. 489, 63 S. Ct. 488.

A reading of that case and the cases interpreting its doctrine will show that the rule of law which permits Jones Act recovery to a member of a crew, when the accident occurred on land or off the ship, definitely requires that there be a clear

and unequivocable connection between the accident and the purpose for which the vessel is being navigated. See, also, Marceau vs. Great Lakes Transit Corp., 146 F. 2d 416, certiorari denied, 224 U.S. 872, 65 S.Ct. 1018.

It is contended, therefore, that under no proper determination of the facts of the instant case, and under the law, could it be held that the decedent was doing service on behalf of the Texas Company which related to the operation of the "Mary Virginia" at the time of his death, within the meaning of the hereinabove cited decisions.

PLAINTIFF MUST PROVE NEGLIGENCE TO RECOVER, BY A PREPONDERANCE OF THE EVIDENCE

Plaintiff, to fulfill the requirements of the Jones Act, must prove negligence on the part of his employer, proximate to the accident, which caused the accident and the resulting injuries or death.

At the time of the instant accident, the decedent, Guidry, his brother, Lottinger and Badeaux were present at the scene.

There is not a scintilla of evidence adduced from the three living men mentioned above that tends to prove or from which any inference may be drawn that The Texas Company was guilty of any negligence in the premises.

These men all testified that decedent, Guidry, climbed upon the platform and commenced carrying out his duties thereon. He then applied a wrench to a valve on the gas pipeline.

This line extended from the lake bottom through the platform to a height of about one or one and one-half feet; then

it bent from the vertical position to the horizontal position by means of an "L", and then it extended horizontally to the instant valve, from which there was a further horizontal extension of two or three feet, at the end of which the pipe was vented to the open air.

This pipeline had been in existence for several months. During that time, the attached Exhibit will show and the evidence verifies the fact that plaintiff was the representative of The Texas Company, who maintained the equipment of that well platform No. 20 and on the other platforms in Lake Salvador. It is true that he received help from other roustabouts, but it is equally true that he was thoroughly familiar with the equipment on that platform and others. If the line was defective and the defect could have been ascertained by reasonable inspection, he was the man to determine the defect and to either fix it or report it to his superiors.

There is no testimony in the record that this pipeline had ever been determined to be defective, and there is no testimony in the record that a reasonable inspection could determine that it was defective.

If a reasonable inspection could determine the defect, the only way that The Texas Company could determine it would be through the person of Mr. Guidry, the decedent, its representative in such matters.

Still further, The Texas Company is not an insurer.

The record shows that The Texas Company owned the pipeline in question, but there is no proof in the record that the

Texas Company constructed it. So far as the record is concerned, it may have been constructed by an independent contractor, or it may have been constructed by a third party owner, who then sold the property to The Texas Company.

The record must be accepted as it is written.

With these contentions in mind, let us return to the platform, where Guidry was in the process, on the day in question, of applying a wrench to the said valve.

The evidence is that he jerked on the valve once or twice and that the line parted at the "L".

It is respectfully submitted that if anyone had control of the instrumentality, that control was had by Mr. Guidry. If anyone could and should have discovered the defect, that person was Mr. Guidry.

Plaintiff placed Mr. Porter, Assistant Superintendent of The Texas Company for the area at the time of the accident, on the stand as her own witness.

Under the serious objection of defendant, this witness, who had never seen the pipe before the accident, was asked to express an opinion as to what could have caused the parting of the lines.

Over the objection, he testified that the threads in the riser must have given away. He stated that without anyone fooling with the pipe, the line would have held.

Under cross-examination, he stated readily that the accident could have been caused or contributed to by means other than those expressed immediately above, and that the riser, as

he viewed it after the accident, was smashed and the threads badly damaged.

He readily admitted that he was not an expert in the field of examining damaged metal to ascertain the cause of an accident such as this one after it had taken place, and he expressed an opinion only because he was called upon to do so.

We respectfully submit that plaintiff has not proven her case on the negligence basis and that res ipsa loquitur affords her no comfort.

In Asprodites vs. Standard Fruit & Steamship Co., Fifth Circuit, (1940), 108 F. 2d 729, The Court held:

> "There is no basis for the application of the doctrine of res ipsa loquitur when the thing that caused the injury is under the exclusive control and management of the injured party. Courtney v. New York, N.H. & H.R. Co., D.C., 213 F. 388, 390. Cf. The Rambler, 2 Cir., 290 F. 791."

The Court held, further:

> "In a recent case, this Court had occasion to point out that the doctrine of res ipsa loquitur is not proof and does not supply a want of proof."

We submit, as indicated above, that plaintiff has not proven her case and that res ipsa loquitur is not available to her.

ALTERNATIVELY, DEFENDANT CONTENDS THAT THE VERDICT WAS UNREASONABLE, GROSSLY EXCESSIVE AND BASED UPON INADEQUATE THOUGHT AND CONSIDERATION

On this premise alone, a new trial should be granted.

Alternatively, we submit that a remittitur should be entered herein.

The record discloses that at the time of his death, the decedent was forty-five (45) years of age. He had worked for The Texas Company for sixteen (16) years and was still in the capacity of roustabout, which is the lowest classification of oil field workers. This fact is common knowledge and we are certain that the Court will take judicial notice of it.

The idea of Guidry increasing his station of life substantially is not based upon fact, a reasonable expectancy or mature consideration. It is utter speculation.

When a laborer reaches the age of forty-five (45), his return is usually on the decrease rather than on the increase.

In the two years prior to his death, decedent earned, in round figures, Forty-four Hundred Dollars ($4,400.00) and Forty-seven Hundred Dollars ($4,700.00).

How much can a father pay out of a Forty-seven Hundred Dollars per annum salary to support three children?

He must feed, clothe and shelter himself. He must bear the cost of traveling to and from work. He must furnish money to defray his incidental expenses and the cost of his entertainment. He must pay taxes of all kinds, direct and hidden. He must provde for periods of illness and other contingencies.

Although, in the defendant's mind, the following figures are, in themselves, excessive, we use them for illustration only to show how utterly absurd, unreasonable and unjust the verdict of the jury is in this case.

For the sake of argument, let us assume that the father could provide Three Thousand Dollars ($3,000.00) net per annum

out of his salary toward his childrens' support. This figure is extremely high, particularly in view of the fact that there is some evidence that his children, at the time of his death, had left the broken family home and were living with relatives. With this assumption, we continue by submitting the facts of the instant case:

Decedent was killed on February 4, 1953.

If we accrue Three Thousand Dollars ($3,000.00) per year for 1953 through 1955 and for the first two months of 1956, we have nine thousand, five hundred dollars ($9,500.00), which would not be subject to a discount.

The decedent had three children at the time of his death, five, eight and thirteen years of age, respectively; that is to say, the said children were in his or her fifth, eighth and thirteenth year at that time.

The above Nine Thousand, Five Hundred Dollars ($9,500.00) would bring the three children up to his or her eighth, eleventh and sixteenth year, respectively, by reason of three years' support having been provided for to each out of the said Nine Thousand, Five Hundred Dollars ($9,500.00).

Under this assumption, for the purpose of argument, the father would provide Three Thousand Dollars ($3,000.00) per year for five additional years, until the eldest child reached the age of twenty-one years.

For the Court's perusal, we are attaching hereto, as Exhibit A, a table showing the present value of One Thousand Dollars ($1,000.00) due one through thirteen years after date,

discounted at four, five and six per cent.

To continue our illustration, we apply the mean discount rate of five per cent to the assumed contributions by the father to the three children during the five years up to the majority of the said first child:

YEARS	DISCOUNTED VALUE OF $1,000.00		THOUSANDS OF DOLLARS		
1	$952.38	X	3	=	$ 2,857.14
2	907.03	X	3	=	2,721.09
3	863.84	X	3	=	2,591.52
4	822.70	X	3	=	2,468.10
5	783.53	X	3	=	2,350.59

PRESENT VALUE OF TOTAL CONTRIBUTIONS, AFTER DISCOUNT..... $12,988.44

After the first child attained majority, the father would have had two children to support for five additonal years, or, until the second child reached majority (sixth to tenth year after date).

We submit that a father in decedent's circumstances could not possibly continue to pay Three Thousand Dollars ($3,000.00) to support two children annually, but, for the sake of illustration, let us assume that annual contribution for the said five years:

YEARS	DISCOUNTED VALUE OF $1,000.00		THOUSANDS OF DOLLARS		
6	$746.22	X	3	=	$2,238.66
7	710.68	X	3	=	2,132.04
8	676.84	X	3	=	2,030.52
9	644.61	X	3	=	1,933.83
10	613.91	X	3	=	1,841.73

PRESENT VALUE OF TOTAL CONTRIBUTIONS, AFTER DISCOUNT..... $10,176.78

Thereafter, the father, in this illustration, would have three additional years to support one child. Although we believe that, under the circumstances, the father could not possibly afford to pay Two Thousand Dollars ($2,000.00) for the support of one child, let us use that figure herein to carry out the case history:

YEARS	DISCOUNTED VALUE OF $1,000.00	-	THOUSANDS OF DOLLARS		
11	$ 584.68	X	2	=	$ 1,169.36
12	556.84	X	2	=	1,113.68
13	530.32	X	2	=	1,060.64

PRESENT VALUE OF TOTAL CONTRIBUTIONS, AFTER DISCOUNT..... $ 3,343.68

RECAPITULATION:

Accrued portion of verdict for years 1953 through 1955 and two months of 1956.....	9,500.00
Present value of Support from first through fifth additional years.....	12,988.44
Present value of support from sixth through tenth additional years.....	10,176.78
Present value of support from eleventh through thirteenth additional years.....	3,343.68
GRAND TOTAL.....	$36,008.90

We respectfully submit that the figure of thirty-six thousand eight and 90/100 ($36,008.90) dollars, as the discounted net of contributions by father to children, is extremely high, for the reason that we do not believe that this parent could have contributed Three Thousand Dollars ($3,000.00), after all taxes and expenses, to the childrens' support for the past three years and the next ten years, particularly, after one child reached majority.

We use these figures only to illustrate how ridiculous and

unjustifiable the jury's verdict was in this case.

We respectfully submit that a new trial should be given on this factor alone.

In the event the Court should not grant a new trial, for this reason and the various considerations mentioned hereinabove, we respectfully submit, in the alternative, that the verdict should be the subject of a remittitur, whereby, plaintiff would be forced to remit that portion of the verdict which exceeds Twenty-eight Thousand, Five Hundred and no/100 ($28,500.) Dollars, which we believe to be a fair appraisal of the support which the deceased father could reasonably be expected to pay on behalf of his children.

The idea, argued on rebuttal by plaintiff, that this man was a Nine Thousand Dollars ($9,000.00) a year man, is not based upon fact and is contrary to the figures which were in the possession of plaintiff during the trial.

It was plaintiff's duty to point out that the sum of Two Hundred, Twenty-four and 40/100 ($224.40) Dollars, paid to decedent's estate, was not a part of decedent's earnings. Each year, decedent was entitled to a two weeks' vacation with pay. Decedent, having been killed on February 4, 1953, had not taken a 1953 vacation and, therefore, The Texas Company paid to the heirs of decedent the amount that decedent would have been paid during the time decedent would have been on vacation had he lived. Instead, it was represented that this Two Hundred, Twenty-four and 40/100 ($224.40) Dollars was an increase in earnings, when, under no stretch of the imagination, could it

have increased his annual income.

CONCLUSION

The Texas Company respectfully submits that the motion notwithstanding the verdict should be maintained and that judgment should be entered for defendant for the following reasons:

1st, that there was no employer-employee relationship existing between decedent and the operator of the "Mary Virginia"

2nd, That decedent was not a member of the crew of said vessel;

3rd, That decedent was not doing work relating to the operation of the "Mary Virginia" at the time of his death, and

4th, That there is no evidence in the record whatever to prove that The Texas Company was guilty of negligence.

Alternatively, The Texas Company respectfully submits that a new trial should be granted,

1st, In view of the lack of time in which the jury deliberated on the important questions in this case;

2nd, In view of the grossly excessive verdict, which shows a lack of clear thinking on the part of the jury;

3rd, In view of the fact that there is no evidence to support the finding of negligence on the part of The Texas Company, and,

4th, In view of the argument of plaintiff to the jury that decedent was a Nine Thousand Dollars ($9,000.00) a year man.

The Texas Company respectfully submits, in the alternative, further, that the verdict is grossly excessive and that a remittitur should be entered, requiring plaintiff to remit that

portion of the verdict in excess of Twenty-eight Thousand, Five Hundred and No/100 ($28,500.00) Dollars, or to stand a new trial, should she fail to do so.

Respectfully submitted,

MAY & CARRERE

BY: S/ E. A. Carrere, Jr.
Ernest A. Carrere, Jr.
Attorneys for Defendant
409 California Building
New Orleans, Louisiana

CERTIFICATE

Undersigned Counsel hereby certifies that copies of the foregoing Motions and of the foregoing Memorandum in support of said Motions have been forwarded, postage pre-paid, to Counsel for plaintiff, on this 28th day of March, 1956.

s/ E. A. Carrere, Jr.
Ernest A. Carrere, Jr.

...ooOoo...

EXHIBITS ATTACHED TO FOREGOING MOTION OMITTED BEING SENT TO CIRCUIT COURT IN ORIGINAL FORM

...ooOoo...

HEARING ON MOTION OF DEFENDANT FOR JUDGMENT NOTWITHSTANDING THE VERDICT, ETC.

Minute Entry April 25, 1956 Wright, J:
(Number and title omitted)

This matter came on this day for hearing on motion of defendant for judgment notwithstanding the verdict and, in the alternative, for a new trial, and on motion of defendant for a new trial, and, in the alternative, further, for a remittitur.

Present: Jack W. Thomson, Jr.
Attorney for Plaintiff;

E. A. Carrere, Jr.
Attorney for Defendant;

After hearing argument of counsel, IT WAS ORDERED by the Court that the motion of defendant for judgment notwithstanding the verdict be DENIED.

Argument having been heard on motion of defendant for a new trial, and alternatively for a remittitur; the matter was submitted and the Court took time to consider. Counsel to prepare proposed figures in connection with the motion for a remittitur or a new trial within ten days.

J.S.W.

...ooOoo...

ARGUMENT ON MOTION OF DEFENDANT FOR JUDGMENT NOTWITHSTANDING THE VERDICT, ETC.

(Number and title omitted) (Filed: May 7, 1956)

(Argument by Mr. Carrere)

THE COURT:

With reference to the other feature of the case, other than the motion for ne trial and/or remittitur, you need not argue the point. It is the Court's view that the case was one for the Jury. In this case the questions were submitted to the Jury and the Jury answered the questions favorably to the plaintiff's contentions.

If this Court were writing on a new slate, before Martin, it might have some misgivings about the sufficiency of the evidence to supply the answers given by the Jury. But after Martin,

and, although I realize that Martin went off on a different slant, nevertheless, a District Judge should be very cautious before setting aside the findings of the Jury in a case of this kind on facts so close, as they are, to the Martin case. I realize there are some differences in the factual situations between here and Martin. Suffice it to say that it is the Court's judgment that in view of the authorities that have been cited by Counsel in their briefs, there is no basis in the evidence for reversing the Jury's findings with reference to the interrogatories answered by the Jury, all of which answers, of course, were favorable to the plaintiff.

With reference to the question of res ipsa, the Court instructed the Jury that if the Jury found that the plaintiff was free from negligence and that the accident happened from some unexplained cause, such as the bursting of this pipe which one of the witnesses testified had stripped threads, then an inference of negligence may arise from that fact. The instruction is in accord with the Jessionowski case reported in 339 U.S. It is also in accord with the case cited by the Fifth Circuit, of April 6th, the Butler case.

With reference to the remittitur, the Court has very great reservations. Let's proceed with that.

(Argument by Mr. Thomson.)

THE COURT:

There is no question about the earnings figure. The earnings figures for '51 and '52 were $4,400 and $4,700, and certainly reasonable people will take those figures rather than

six weeks of '53 in arriving at what the pay was annually. That's how simple it is to me.

You can proceed to something else.

(Argument by Mr. Thomson).

THE COURT:

There are a couple of things I'd like to refer to at the present time. I think, first of all, before this Court is going to act in this case, there must be some showing in the record this money is going to go to the children. Such showing would possibly be a trust fund established not in the hands of the mother, but in the hands of persons who would perform, according to the laws of the State of Louisiana, and see that this money was given to the children. That is Number 1.

Number 2 is that it is the Court's present intention to remit the Jury's verdict along these lines, and the Court will accept figures from both sides to carry out the Court's intentions in this direction. I might say further that we are not dealing with the ordinary Louisiana pain and suffering and loss of affection case. We are dealing here with a Jones Act case wherein the award in damages has nothing to do with such things as pain and sufering, loss of affection, and other intangibles which it is almost impossible to matehmatically calculate. Here we are dealing with a situation where the quantum in damages is to be determined by the amount which the survivors could reasonably expect to receive from their father during their minority, had he lived that long. That is the only test, and the Courts have indicated that in arriving at the amount of the award

it is proper for the Jury to consider his earnings, discounted, and the expectancy of his continuing with those earnings, whether they are increased, or decreased during the life expectancy or minority. In a case of this kind, therefore, there is much greater reason why a Court should scrutinize carefully the award made by a Jury as distinguished from the ordinary Louisiana damage suit where we have such intangibles as items of damage as pain and suffering, permanent injury, and whatnot.

With those ideas in mind it is the Court's present view it is going to cut this verdict in this way, or grant a new trial if not acceptable to the plaintiff.

Using the 1952 earnings, $4,700, about $500 of that would be tax, so you would get down to about $4,200. There are three children. The Court feels that $3,000 of that probably would be a fair amount to give to the children during the time the three children were all minors; that is, leaving only $1,200 for the father himself to live on, which isn't giving him too much. After the first child became a major, then the Court would be inclined to cut the $3,000 by one-fourth--not one-third because there would still be the necessity to maintain a home for the remaining two minors, and consequently one-third would be unrealistic in view of the fact the home would nevertheless have to be maintained. When the second child arrives at majority, the Court would be inclined to cut the award further to one-half of that $3,000, or $1,500 for the third child during the balance of its minority.

That is the Court's thinking at this time, so if within

ten days Counsel for both sides will provide me with calculations following those thoughts, I will rule on this motion.

We will now take up Number 4926.

...ooOo...

ORDER GRANTING MOTION FOR A NEW TRIAL

Minute Entry May 10, 1956 Wright, J:
(Number and title omitted)

This cause came on at a former day on the motion of the defendant for judgment notwithstanding the verdict, and, in the alternative, for a new trial and on the motion of the defendant for a new trial and, in the alternative, for a remittitur, and was argued by counsel for the respective parties and submitted when the Court took time to consider;

Now, on due consideration thereof;

IT IS ORDERED by the Court that the motion of the Defendant for a new trial be granted and limited to the question of damages unless, within 10 days plaintiff enters a remittitur of $40,000.00.

J.S.W.

...ooOoo...

REMITTITUR

(Number and title omitted) (Filed: May 19, 1956)

In response to the order of court dated May 10, 1956, plaintiff, through her undersigned counsel, hereby enters a remittitur of $40,000.00 with respect to the judgment entered herein on March 21, 1956.

Respectfully submitted
CLAY, COLEMAN & DUTREY
S/ Jack W. Thomson, Jr.
Jack W. Thomson, Jr.

NOTICE OF APPEAL

(Number and title omitted) (Filed: May 28, 1956)

Notice is given, hereby, that The Texas Company, defendant, hereby appeals to the United States Court of Appeal for the Fifth Circuit, from the judgment entered in this action on the 11th day of May, 1956, as reduced by the remittitur ordered herein on May 10, 1956, and filed herein by plaintiff on May 19th, 1956.

May & Carrere

by (sgd) E. A. Carrere, Jr.
Attorneys for Defendant,
409 California Building,
New Orleans, Louisiana.

New Orleans, Louisiana,
the 28 day of May, 1956.

...oOo...

DESIGNATION OF THE RECORD ON APPEAL

(Number and title omitted) (Filed: May 28, 1956)

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, the defendant-appellant hereby designates, for inclusion in the record on appeal to the United States Circuit Court of Appeal for the Fifth Circuit, said appeal taken by Notice of Appeal filed on this 28th day of May, 1956, the entire record, including all pleadings, all testimony, all stipulations all orders, all exhibits, all argument of Counsel taken by the Court Reporter, all rulings by the Court prior to trial, during trial and on argument of motions for judgment notwithstanding the verdict, for a new trial and for a remittitur.

IT IS the intention of the defendant that the full and complete record be made the record of this case on appeal.

MAY & CARRERE

BY: (sgd) E. A. Carrere, Jr.
Attorneys for Defendant.

...oOo...

SUPERSEDEAS AND COST BOND ON APPEAL

(Number and title omitted) (Filed: May 28, 1956)

We, the undersigned, The Texas Company and The Travelers Indemnity Company, jointly and severally acknowledge that we and our successors are bound, jointly, to pay to plaintiff, Mrs. Marowigne Edna McConnell Savoie, Administratrix, the sum of Forty-five Thousand and no/100 -- ($45,000.00), Dollars, subject to the conditions of this bond, as hereinafter stated.

The condition of this bond is that, whereas, the defendant has appealed to the Court of Appeal for the Fifth Circuit, from the judgment of this Court, entered on the 11th day of May, 1956, if this defendant shall pay the amount of the final judgment herein, if his appeal shall be dismissed or the judgment affirmed or modified, together with all costs that may be awarded, then this bond is void, otherwise to be and remain in full force and effect.

Dated this 25th day of May, 1956.

THE TEXAS COMPANY
BY. (sgd) E. A. Carrere, Jr.,
Authorized Attorney.

THE TRAVELERS INDEMNITY COMPANY
BY: (sgd) Nesbitt W. Hagood,
Authorized Agent.
(seal)

O R D E R

IT IS ORDERED BY THE COURT that the foregoing supersedeas and cost bond be filed and that the form and amount thereof be

approved.

New Orleans, Louisiana, the 28th day of May, 1956.

(sgd) J. Skelly Wright
District Judge.

...oOo...

MOTION & ORDER TRANSMITTING EXHIBITS IN ORIGINAL

(Number and title omitted) (Filed: June 13, 1956)

The Texas Company, defendant-appellee, moves to use all the original exhibits in the transcript for appeal and to send said exhibits to the Court of Appeals for use in considering the appeal in this case.

MAY & CARRERE

BY: (sgd) E. A. Carrere, Jr.

O R D E R

IT IS ORDERED by the Court that all original exhibits be used in the transcript on appeal in this case.

New Orleans, Louisiana the 13th day of June, 1956.

(sgd) J. Skelly Wright
District Judge.

...oOo...

CLERK'S CERTIFICATE:

I, A. DALLAM O'BRIEN, JR., Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify that the foregoing 235 pages contain and form a true and correct copy of the record entitled "Mrs. Marowigne Edna McConnell Savoie, etc. -versus- The Texas Company" No. 5288 of the Civil Action Docket of this Court as made up in accordance with the designation of contents copied herein.

(S e a l
o f
C o u r t)

WITNESS my hand and the seal of said court this 29th day of June, 1956 A.D.

A. DALLAM O'BRIEN, JR., Clerk

By:_____
Deputy Clerk

* * * *
* * *
* *
* *
*

LIBRARY
SUPREME COURT, U.S.

FILED
JUL 5 1957
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. ~~1150~~ 230

MRS. MAROWIGNE EDNA McCONNELL SAVOIE,
Administratrix of the Estate of
Horace P. Guidry,

Petitioner,

versus

THE TEXAS COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

CLAY, COLEMAN, DUTREY & THOMSON,
ELWOOD R. CLAY,
JAMES JULIAN COLEMAN,
LOUIS J. DUTREY,
JACK W. THOMSON, JR.,
Counsel for Petitioner,
1649 National Bank of Commerce,
New Orleans, Louisiana.

Subject Index

	Page
Jurisdiction	2
Opinions Below	2
Questions Presented	2
Short Statement	3
Reasons Relied On for Granting the Writ	7
Appendix I	20
Appendix II:	
Opinion, U. S. Court of Appeals for the Fifth Circuit	22
Judgment, U. S. Court of Appeals for the Fifth Circuit	25
Petition for Rehearing	26
Brief in Support of Petition for Rehearing	28
Opinion on Petition for Rehearing	32
Order Denying Rehearing	34

Cases Cited

Dowell, Inc., v. Jowers, 182 F.2d 576 (C.C.A. 5th 1950)	18
Kanatzer v. Chrysler Corp., 199 F.2d 610 (C.C.A. 10th 1952)	14
Rogers v. Missouri Pacific Railroad Co., U. S. , 77 S. Ct. 443 (1957)	9
Senko v. LaCrosse Dredging Corp., U. S. , 77 S. Ct. 415 (1957)	4, 8
The Texas Company v. Martin, 350 U. S. 879, 76 S. Ct. 141 (1955)	8
Woodworth v. Chesbrough, 244 U. S. 80, 37 S. Ct. 583 (1917)	14

Statutes Cited

	Page
Act of March 4, 1915, c. 153, Sec. 20, 38 Stat. 1185; as amended June 5, 1920, c. 250, Sec. 33, 41 Stat. 1007; 46 U.S.C. 688, Jones Act	2, 3
Act of June 25, 1948, c. 646, 62 Stat. 928; 28 U.S.C. 1254	2

United States Constitution Cited

Seventh Amendment	8

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. _____

MRS. MAROWIGNE EDNA McCONNELL SAVOIE,
Administratrix of the Estate of
Horace P. Guidry,

Petitioner,

versus

THE TEXAS COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Mrs. Marowigne Edna McConnell Savoie, Administratrix of the Estate of Horace P. Guidry, respectfully petitions that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this matter on February 5, 1957, a petition for rehearing of which was denied on April 9,

1957. Said judgment reverses a judgment of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division.

Jurisdiction

The judgment of the Court of Appeals for the Fifth Circuit was entered on February 5, 1957. (r. 240). A petition for rehearing, which was filed timely, was denied on April 9, 1957. (r. 251). The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254(1).

Opinions Below

There is no printed opinion of the judgment of the District Court for the Eastern District of Louisiana. The opinion of the United States Court of Appeals for the Fifth Circuit is printed at 240 F.(2d) 674; the denial of the petition for rehearing at 242 F.(2d) 667.

Questions Presented

(1) Whether the United States Court of Appeals for the Fifth Circuit, in an action brought under the Jones Act, 46 U.S.C. 688, has the right to reverse the finding of the jury on a question of fact that decedent was a seaman, when there was substantial evidence to support the jury's finding.

(2) Whether a jury award of $80,000.00 damages for the death of a 45 year old seaman who left three minor children should not be reinstated when the trial judge incorrectly ordered a remittitur of $40,000.00 and, on appeal to the Fifth Circuit, respondent had opened the issue of reasonableness of damages found by the jury.

Summary and Short Statement of the Matter Involved

Horace P. Guidry, an employee of The Texas Company attached to a 44 foot lugger, the Mary Virginia, was killed on February 4, 1953 by an explosion which occurred on a platfrom in the middle of the 8 or 9 mile wide Lake Salvador, moments after he had stepped off his vessel, the Mary Virginia. The decedent's widow brought suit under the Jones Act for damages in behalf of the three minor children of decedent. The trial judge presented the following questions and received the following answers from the jury:

"WAS THE MARY VIRGINIA OPERATED AND CONTROLLED BY THE TEXAS COMPANY? YES.

IF SO, WAS HORACE GUIDRY A MEMBER OF THE CREW OF THAT VESSEL? YES.

IF SO, WAS THE WORK IN WHICH HE WAS ENGAGED AT THE TIME OF HIS DEATH PURSUANT TO HIS EMPLOYMENT AS A MEMBER OF THE CREW OF THE MARY VIRGINIA? YES.

IF SO, WAS HIS DEATH PROXIMATELY CAUSED BY THE NEGLIGENCE OF THE DEFENDANT OR ITS AGENTS? YES.

IF SO, WAS HORACE GUIDRY GUILTY OF CONTRIBUTORY NEGLIGENCE? . . . NO.

STATE THE AWARD THE PLAINTIFF SHOULD RECEIVE IN THIS CASE. $80,000.00." (r. 201, 202).

The Texas Company, at the close of plaintiff's case (r. 109) and at the close of all the evidence (r. 147) had moved for a directed verdict, but both motions were denied and a verdict was rendered for the plaintiff. Thereafter defendant moved for a judgment *non obstante veredicto* and for a new trial. (r. 203). The trial judge denied the motion for judgment *n.o.v.* (r. 227) but ordered a new trial on the sole question of damages unless plaintiff should enter a remittitur of $40,000.00 within ten days. (r. 231). Plaintiff entered a timely remittitur. (r. 231). Defendant then took an appeal to the Court of Appeals for the Fifth Circuit contending, *inter alia*, that decedent was not a seaman and that the *quantum* found by the jury was "grossly excessive" and "contrary to right reason." (Respondent's brief on appeal, p. 5.) The Court of Appeals on February 5, 1957 reversed the jury's finding of fact that decedent was a member of the crew of the Mary Virginia and held that "he was merely a passenger on the Mary Virginia, and he was not on the boat when he met his death." (r. 239).

A petition for rehearing, calling the court's attention to *Senko v. LaCrosse Dredging Corp.*, 77 S. Ct. 415, was denied on April 9, 1957 on the ground that there was no evidence reasonably tending to show that decedent was a member of the crew. (r. 249).

Decedent was employed by The Texas Company for 16 years prior to his death. The Texas Company witnesses testified that the decedent was classified as a "roustabout." (r. 121). The facts show that a great portion of the decedent's working time was spent on the vessel Mary Virginia, which is a 44 foot lugger. The Mary

Virginia was chartered to The Texas Company by a Mr. John Kennedy and was assigned the task of paraffin scraping the thirty odd wells owned by The Texas Company in Lake Salvador and which are accessible only by water. (r. 131). The Texas Company superintendent called the Mary Virginia a "paraffin scraping vessel." (r. 94). On such duty the vessel went from well to well throughout the lake checking charts and seeing that pipes at the well sites had been cleaned of any paraffin that had accumulated. (r. 125). The work of the Mary Virginia required tying up and casting off from the many well sites many times a day since paraffin scraping and checking recorders is a continuous operation. (r. 125). The Mary Virginia was the only boat doing paraffin scraping in Lake Salvador. (r. 137).

The Texas Company superintendent testified that the normal crew of a vessel such as the Mary Virginia was two men. (r. 98). The charter party of the Mary Virginia was introduced in evidence by The Texas Company without objection. (d. ex. A). Under the charter the jury could clearly see that The Texas Company was to pay $30.00 a day when the owner supplied the necessary two man crew for the Mary Virginia and was to pay only $23.00 a day when it, The Texas Company, supplied the second man in the crew and the owner supplied only one of the crew. On the day of decedent's death, while decedent was shipping aboard the Mary Virginia, the owner had supplied only a one man crew. (r. 119).

The substantial evidence presented to the jury proving conclusively that decedent was a member of the crew of the Mary Virginia was that the decedent had been in

the employ of The Texas Company for 16 years and was familiar with the location of every one of the thirty odd wells located in Lake Salvador. (r. 62). He took charge of the Mary Virginia and assisted in the navigation of the vessel to the extent that he gave orders while aboard as to its course in the lake and its destination. (r. 50, 62). He employed his brother as captain, the other one of the two man crew needed for the Mary Virginia. (r. 51). The brother who testified to these facts was partially paralyzed at the time of the trial and spoke only French. He did make clear, however, that the days on which the owner of the Mary Virginia supplied two men, one of them would "drive" or steer the boat and the other one would perform services as a crew member, such as tying up and untying when the Mary Virginia touched at the thirty odd platforms in the lake. (r. 64). The Texas Company's witness Badeaux, who was an assistant to the decedent, admitted that it was his job and the decedent's to tie up the Mary Virginia as it touched at well 20, the place of the explosion and just moments before the explosion occurred. (r. 119). The decedent's regular pay as a member of the crew of the Mary Virginia started when he went aboard the Mary Virginia on Lake Salvador each day and stopped in the evening when he disembarked from the lugger. (r. 97). He received regular pay for the whole time he was aboard the Mary Virginia shipping on Lake Salvador. (r. 97).

The evidence showed conclusively that the boat owner supplied a two man crew only two days a week (r. 62, 63) and the balance of the time the decedent worked as a member of the crew with the other crewman. The evidence also shows that The Texas Company saved

$7.00 a day when the owner supplied only one man for the crew and their employee, the decedent, performed the necessary services of the second member of the crew to operate the 44 foot lugger which, by the uniform testimony of both plaintiff's and defendant's witnesses, *required a two man crew.*

Reasons Relied on for Writ of Certiorari

The decision of the United States Court of Appeals for the Fifth Circuit which reverses the finding of the jury that decedent was a member of the crew of the Mary Virginia deprives petitioner of her right to a jury determination of such fact as guaranteed by the Seventh Amendment to the Constitution of the United States. No question was raised herein as to whether the vessel involved had the status of a "vessel" at the time of decedent's death. Testimony of both plaintiff's and defendant's witnesses proved conclusively a fact which the jury had to find and that was that a 44 foot lugger doing the work of the Mary Virginia as a paraffin scraping vessel on Lake Salvador needed the complement of a two man crew. The Texas Company used the decedent as the second man on the Mary Virginia every day except the two days when the owner supplied the two man crew. The Texas Company saved $7.00 a day by doing the logical thing in having its employee, who navigated the vessel, employed the crewman for the vessel, arranged for the crewman's pay, perform the services as the extra member of the crew, which services included, among other things, the tying and untying of the vessel many times a day as it approached and departed from the thirty odd locations

scattered throughout Lake Salvador. The services as a crewman performing this necessary duty is clearly distinguishable from the harbor worker who throws or catches one line perhaps once a day when a ship is docked or departs. The Fifth Circuit, in their opinion, found a fact that was not only contrary to the jury's finding, but clearly contrary to the evidence when they state that the decedent's ". . . duties did not pertain to navigation, nor even to the casual task of throwing a rope or making the boat fast . . ." (r. 239).

Badeaux, The Texas Company's own witness, clearly stated and admitted that The Texas Company employees tied up the Mary Virginia just prior to the accident on well No. 20, (r. 119) and counsel for defendant, The Texas Company, admitted in his argument before the jury that the testimony showed that the decedent did handle lines "every once in a while." (r. 173). It is submitted that the Fifth Circuit not only has reversed the jury's finding of fact, but has found facts that reversed the actual evidence in the record.

The decision of the Court of Appeals below, in reversing the finding of the jury on a question of fact substantiated by the evidence, is so prejudicial to the spirit and principles of law contained in *Senko v. LaCrosse Dredging Corp., supra*, as to amount to a deprivation of petitioner's right to jury determination of facts guaranteed by the Seventh Amendment to the Constitution of the United States. The instant case, following on the heels of *The Texas Company v. Martin*, 350 U. S. 879, reversing 222 F.(2d) 382, may furnish "special and important reasons for the grant of certiorari . . . when

lower federal and state courts persistently deprive litigants of their right to a jury determination." *Rogers v. Missouri Pacific Railroad Co.*, 77 S. Ct., 443, 451 (1957).

Petitioner presented to the jury three arguments on the evidence which, it is submitted, singly or together, support "with reason" the conclusion of the jury. These arguments may be stated briefly as follows:

(a) The total function or service of the Mary Virginia was as a paraffin scraping vessel. The decedent was the chief paraffin scraper for his employer in the Lake Salvador field. Therefore, the work of the decedent was so integrated with the service of the vessel as to make him a member of her crew.

(b) The Mary Virginia required a two man crew for normal operation. However, on all but two days of each week the vessel was not supplied with a full crew. When a regular crewman was absent the decedent became a member of the crew by performing his duties.

(c) The decedent was more than a mere passenger aboard the Mary Virginia. The admitted crew members looked to him for their orders. He controlled the course and destination of the vessel. He assisted in tying up when necessary. He was, in effect, the captain *pro hac vice* and therefore a member of the crew.

The decision of the Fifth Circuit states that ". . . decedent was employed as a roustabout . . . he was em-

ployed to work on the platforms, not on the vessel." (r. 239). The important thing is not the conditions of decedent's original employment, or what title he was given, but what duties he performed in the course of his employment with the consent of his employer. The jury may well have inferred from the evidence that The Texas Company found it expedient to permit decedent to serve as the second crew member at a saving of $7.00 per day to the company.

The decision of the Fifth Circuit further states the decedent's duties did not pertain ". . . to the casual task of throwing a rope or making the boat fast, a service that readily could be performed by a harbor worker." (r. 239). However, the decedent's work of tying up and casting off the Mary Virginia was not the sort of work that readily could be performed by a harbor worker for the reason that the work took place on thirty odd well sites scattered throughout Lake Salvador. Obviously the Mary Virginia required a crewman to be constantly aboard to render this service.

It is conceded that the Mary Virginia was a vessel in navigation within the meaning of the Jones Act, and it is not questioned that decedent had a "more or less permanent attachment" to the vessel. There remains the narrow point of whether the proof was reasonable to support the jury's finding that decedent's duties were "in aid of navigation" upon which the Fifth Circuit relies for its reversal of the jury. We submit that the proof on this narrow point is not only sufficient but is in the preponderance that decedent assisted in the navigation of

the Mary Virginia and contributed to the "functioning of the vessel as a vessel."

The record discloses that the charts on each one of the thirty odd wells in Lake Salvador had to be checked about every day and to do so the Mary Virginia would pull up to the well site, the decedent would then check the chart, get back on the boat and go off, the Mary Virginia going from well to well in this manner. In addition to checking the charts, the Mary Virginia's routine duty included paraffin scraping at any one of the wells which needed the service to be performed. The jury correctly found that it required two men to operate a 44 foot lugger and accomplish its mission, as brought out by defendant's witness, Mr. Lottinger.

If there were no other evidence at all for a reasonable basis for the jury's finding, it is the fact that the Mary Virginia needed two men as a normal crew on a boat of its size performing its services. The questioning of Mr. Porter, superintendent of The Texas Company's operation in Lake Salvador, confirmed this undisputed fact. Mr. Porter testified as follows:

"Q. What is the normal crew on a boat of the type of the Mary Virginia?

A. Two men." (r. 98).

The questioning of Mr. Badeaux, The Texas Company's employee and witness, who was also an eye witness to the decedent's death, was as follows:

"Q. When you got to a well who ties up?
A. Well, it is supposed to be a two man crew, but that day they only had one man. We had to tie up the boat that day." (r. 119).

In the face of the above quoted testimony upon what basis could the Court of Appeals hold that The Texas Company employees aboard the Mary Virginia were "passengers who did not even perform the casual task of throwing a rope or making a boat fast"? How more reasonable is the finding of the jury that decedent, who was aboard the Mary Virginia for many years being paid full time while aboard, did perform the services of a member of the crew as the vessel proceeded about its daily task upon the thirty odd well sites scattered throughout the lake.

Not one iota of evidence can be found in the record or in the opinion of the Fifth Circuit setting aside the fact or denying that the Mary Virginia needed a two man crew and that The Texas Company arranged through its charter that the cost of the charter would be reduced $7.00 per day when the owner supplied but one man. The obvious question to all, since the evidence shows conclusively the owner supplied a full crew only two days a week and the Mary Virginia operated every day, is "Where did the other crewman come from?" The answer is equally obvious that the other crewman was the other man aboard the Mary Virginia—the decedent, Horace P. Guidry.

The Jury Award of $80,000.00 Damages for the Death of a 45 Year Old Seaman Who Left Three Minor Children Should Be Reinstated, Since Respondent Has Opened the Issue of Reasonableness of the Quantum and the Record Supports the Jury Determination of Damages.

At the time of his death the decedent, at age 45, was in the position of a trusted, experienced employee of The Texas Company who could look forward to years of increased earnings for the benefit of his three children. The jury award of $80,000.00 represented a determination of fact that the children were entitled to be compensated the amount of their loss, calculated on the basis of earnings figures *submitted to them over the signature of The Texas Company Division Accountant.* No question has been raised at anytime as to the propriety and correctness of the instructions of the trial judge given to the jury with respect to the award of damages.

The determination of damages by the instant jury was eminently correct, based as it was upon undisputed earnings figures, and petitioner has attached hereto an appendix setting forth a reasonable basis for the jury's findings of damages. (See Appendix I). The trial judge fell into error when he ordered a remittitur of one-half the jury verdict, his error consisting of (1) failure to give any consideration to the six week's earnings of decedent immediately prior to his death; and (2) promulgation of a fixed rule or formula for the calculation of loss of support not hitherto authorized in Jones Act suits. Petitioner, it is true, accepted the remittitur and did not appeal from the new trial order upon which the remittitur was conditioned. (r. 231). However, an order granting or denying a new trial is not appealable, and peti-

tioner accepted the remittitur because, under the circumstances, a new trial would not have changed the facts with respect to decedent's earnings, and, therefore, any verdict in excess of $40,000.00 which might be rendered in a new trial or, indeed, in successive new trials, would be subject to the same remittitur by the trial judge under his announced ruling.

Once having accepted the remittitur petitioner could not then appeal from the verdict. *Woodworth v. Chesbrough*, 244 U. S. 80 (1917). Petitioner was in the position of not being able to obtain appellate review of the errors of the trial judge with respect to review of the jury award of damages, whether petitioner accepted or rejected the remittitur. *Cf. Kanatzer v. Chrysler Corp.*, 199 F.(2d) 610 (C.C.A. 10th 1952).

The Texas Company, however, applied to the Court of Appeals for the Fifth Circuit to review the *quantum* found by the jury and thus, it is submitted, the issue of reasonableness of the jury's award has been opened anew by the action of The Texas Company. This Honorable Court, it is submitted, should therefore reinstate the jury verdict if, in the course of review herein, it should find itself in agreement with petitioner that error was committed in remitting the award of $80,000.00 by the jury.

The trial judge declined to give any effect whatever to the earnings of the decedent for the year 1953, saying:

> "There is no question about the earnings figure. The earnings figures for '51 and '52 were $4,400 and $4,700, and certainly reasonable people will take those figures rather than six weeks of '53 in

arriving at what the pay was annually. That's how simple it is to me." (r. 228, 229).

Why should reasonable people who are charged with the duty of determining the amount of loss of a man's earnings in the future disregard the wages received by decedent for the period immediately prior to his death, however brief that period might be? The jurors were not instructed by the court to ignore the evidence of decedent's earnings for the year 1953. The Texas Company made no such request that such earnings be ignored and, it is submitted, if the jurors had been charged "as reasonable men in determining the loss of future wages you are to give no account to the '53 earnings of decedent", such instruction would have constituted reversible error.

Prior to the trial of this case petitioner exhausted the legal remedy available to her for the purpose of securing a complete 16 year record of the wages paid decedent by The Texas Company. Petitioner moved the trial court for permission to inspect such records under the discovery rules of civil procedure. (r. 11, 12). The motion to produce the wage record of decedent was contested by The Texas Company which argued that to produce a 16 year record would cast upon it an undue burden. As a result of this argument, the court ruled that The Texas Company only had to reveal the earnings of decedent for the three years immediately prior to his death. In compliance with this ruling The Texas Company made available to petitioner a letter from Mr. J. O. Parris, Division Accountant of The Texas Company, stating the "total wages" of decedent for the years 1951, 1952 and 1953. This letter was introduced in evidence by peti-

tioner without objection and later argued to the jury as proof of damages without objection from any quarter. The letter in question reads as follows:

P. O. Box 252
New Orleans 9, La.
March 9, 1956

Mr. E. A. Carrere
407 California Company Building
New Orleans, Louisiana

Dear Sir:

In compliance with your telephone request to our Harvey District Office for a statement of earnings of Mr. Horace Guidry for the years of 1951, 1952 and 1953 until his death, we are enclosing herewith photostatic copies of Form PO-62, Employe's Record which shows that Mr. Guidry earned the following:

Year	Total Wages
1951	4,399.10
1952	4,674.07
1953	929.01

We trust the attachments will enable you to proceed with your handling of this claim. If however, we can be of future assistance, please advise.

Yours very truly,

THE TEXAS COMPANY
Producing Department
/Sgd J. O. Parris
Division Accountant

There is no rule of law which would prohibit the jury from relying upon the earnings figures as furnished by a seaman's employer to fix loss of wages in the future as an element of loss sustained by his survivors. The logical result of consideration of the three year picture of decedent's wages is that decedent would have earned, had he lived, an annual wage in excess of the $4700.00 annual wage used by the trial judge in his calculation. Further, when the evidence is viewed in the light most favorable to petitioner, in accordance with law, it is fair to state that the record supports a finding of damages by the jury in the amount of $80,000.00.

Even where there is no question about a seaman's earnings before death, his future earnings cannot be foretold, in effect, by placing a "ceiling" on such future earnings as was done by the trial judge. (r. 230). Although the jury was instructed that the ascertainment of future loss of support is not subject to "precise mathematical calculation", (r. 195) the lower court, in its review of the award of damages, after the jury had made its determination pursuant to instructions, attempted to bring such uncertainties within the operation of fixed rules of calculation as follows:

> "Using the 1952 earnings, $4,700, about $500 of that would be tax, so you would get down to about $4,200. There are three children. The Court feels that $3,000 of that probably would be a fair amount to give to the children during the time the three children were all minors; that is, leaving only $1,200 for the father himself to live on, which isn't giving him too much. After the first child became a major, then the Court would

be inclined to cut the $3,000 by one-fourth—not one-third because there would still be the necessity to maintain a home for the remaining two minors, and consequently one-third would be unrealistic in view of the fact the home would nevertheless have to be maintained. When the second child arrives at majority, the Court would be inclined to cut the award further to one-half of that $3,000, or $1,500 for the third child during the balance of its minority." (r. 230).

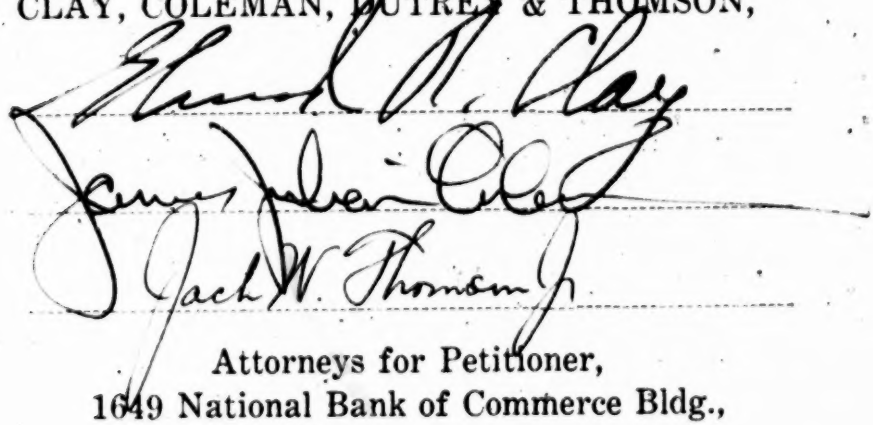
One example of the error inherent in fixed rules for the calculation of loss of future support is that the jury has no room for determination of the degree of sacrifice which the decedent may have made in the future for his children. Is it not logical to conclude that if this decedent would have denied himself for the benefit of his three children when they were all minors by retaining only a small portion of his earnings for himself, that he would have continued to make an equal sacrifice later for the benefit of two children during their minority and then his only son during his minority?

Fixed rules for the ascertainment of loss of future support cannot be allowed to supersede the function of the jury which is to determine the specific amount of damages in a given set of circumstances. An award of damages in the amount of $83,000.00 in a death claim was affirmed by the Fifth Circuit where the facts relating to *quantum* were not too different from the facts of the instant matter. *Dowell, Inc. v. Jowers*, 182 F.(2d) 576 (C.C.A. 5th 1950). It is submitted that this Honorable Court should reinstate the original determination of damages by the jury since the jury finding of fact of damages is clearly supported by the record.

WHEREFORE, petitioner respectfully prays that a writ of certiorari issue to the United States Court of Appeals for the Fifth Circuit to the end that this cause may be reviewed by this Honorable Court; that the judgment of the Court of Appeals for the Fifth Circuit be reversed; that the original award of the jury in the amount of $80,000.00 in favor of petitioner be reinstated; and, in the alternative, that the judgment of the District Court of the United States for the Eastern District of Louisiana in the amount of $40,000.00 in favor of petitioner be reinstated; and that petitioner be granted all general and equitable relief as the nature of the case may afford.

Respectfully submitted,

CLAY, COLEMAN, DUTREY & THOMSON,



Attorneys for Petitioner,
1649 National Bank of Commerce Bldg.,
New Orleans, Louisiana.

APPENDIX I.

Let us assume an earning capacity of $7,332.00 per year, computed on the basis of $705.00 for the first 35 days of 1953 earned by the decedent (thereby eliminating the $224.00 portion of such earnings which, after the trial, were argued to be vacation pay); and further assume that $6,000.00 of which would have been expended directly or indirectly, for the support of three children. Thus 3-1/6 years support, undiscounted, would have accrued on the date verdict was rendered or $19,000.00.

The oldest child will attain majority in approximately six years from date of verdict, so $6,000.00 per year would be due, discounted at 2-3/4% (U. S. Series E Bond rate of return) for those six years. However, those yearly amounts should accrue to the children at the beginning of each year, since an annuity due is payable at the commencement of the period unit, and thus the first year should not be discounted. Using the standard table of future values we find.

Year	Present value of $1000.00	Amount discounted (thousands)	Present value
1 (now)	$1000.00	6	$ 6000.00
2	973.24	6	5839.44
3	947.19	6	5683.14
4	921.84	6	5531.04
5	897.17	6	5383.02
6	873.15	6	5238.90
			$33,675.54

After six years the eldest child reaches majority, and decedent would then have been supporting two children, a condition which would continue for another five years. Using the same rate of discount and $4,000 as the proper amount of support we get:

7	$ 849.78	4	$ 3399.12
8	827.04	4	3308.16
9	804.19	4	3219.64
10	783.36	4	3133.44
11	762.40	4	3049.60
			$16,109.96

At the end of the preceding period decedent would then be supporting his remaining child and only son, and it is not unreasonable to suppose the jury would anticipate a contribution of $4,000 per year for the only child. Again using the table we find:

12	$ 741.99	4	$ 2967.96
13	722.13	4	2888.12
14	702.81	4	2811.24
			$ 8667.72

Recapitulation

	$19,000.00
	33,675.54
	16,109.96
	8,667.72
Total	$77,453.22

APPENDIX II.

OPINION OF THE COURT

Filed February 5, 1957.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16,188

THE TEXAS COMPANY,

Appellant,

versus

MRS. MAROWIGNE EDNA McCONNELL SAVOIE, ADMINISTRATRIX OF THE ESTATE OF HORACE P. GUIDRY,

Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana.

(February 5, 1957.)

Before HUTCHESON, Chief Judge, and HOLMES and BORAH, Circuit Judges.

HOLMES, Circuit Judge: The appellee, as administratrix of the estate of her deceased husband, brought this suit against the appellant, the decedent's employer, for

recovery of damages, under the Jones Act, for the death of her husband, predicating liability upon negligence, while decedent was acting as a member of the crew of the Mary Virginia, a vessel operated and controlled by appellant on Lake Salvadore.

The plaintiff alleged that on February the 4th, 1953, at Well No. 20 in Lake Salvadore, the deceased was in the process of opening a valve, which exploded and blew him off the well platform into the water and caused his death. Several grounds of negligence were alleged, among which were that the valve was defective, which fact should have been known to the Texas Company; that the company failed to furnish a sufficient number of competent employees; and failed to furnish a safe place for the decedent to work. In the alternative, plaintiff sought to recover under the Longshoremen's & Harborworkers' Act, and under the Louisiana Workmen's Compensation Law. These alternatives were reserved by agreement, and are not before the court at this time. The trial below resulted in a verdict and judgment for the plaintiff.

The decisive point on this appeal is whether there was substantial evidence to support the jury's finding that decedent was a member of the crew of the Mary Virginia, which is a question of fact. In denying the motions below, the court said that if it were "writing on a new slate before Martin," it might have some misgivings as to this finding. The court was referring to *Texas Company v. Gianfala*, 222 F. (2) 382, 350 U. S. 879, 76 S. Ct. 141; rehearing denied Jan. 30, 1956, 76 S. Ct. 346. The appellant's contention is that, at the time of his death, the decedent was not in the service of the vessel Mary Vir-

ginia, and that there is no substantial evidence to support the jury's findings on this point.

We agree with appellant that the Supreme Court in the Martin case did not intend to do away with the established federal procedure, whereby in a civil action at law the judge may direct a verdict if there is no issue of fact to be submitted to the jury on a decisive issue; provided, of course, even where there is no conflict in the evidence, if reasonable minds may fairly draw conflicting inferences from the same evidence, requiring different verdicts, the issue is for the jury to determine the correct inference.

From the undisputed facts in this case, the decedent was employed as a roustabout by appellant. He was employed to work on the platforms, not on the vessel. There is no substantial evidence to support the jury's finding that he was a member of the crew. He was an oil-field worker strictly, and not a boat crewman. His duties did not pertain to navigation, not even to the casual task of throwing a rope or making the boat fast, a service that readily could be performed by a harbor worker. He had no such duties to perform. He was merely a passenger on the Mary Virginia, and he was not on the boat when he met his death.

The judgment appealed from is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

REVERSED.

JUDGMENT.

Extract from the Minutes of February 5, 1957.

No. 16,188

THE TEXAS COMPANY

versus

MRS. MAROWIGNE EDNA McCONNELL SAVOIE, ADMINISTRATRIX OF THE ESTATE OF HORACE P. GUIDRY

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered and adjudged that the appellee, Mrs. Marowigne Edna McConnell Savoie, Administratrix of the estate of Horace P. Guidry, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16,188

THE TEXAS COMPANY,

Appellant,

versus

MRS. MAROWIGNE EDNA McCONNELL SAVOIE, ADMINISTRATRIX OF THE ESTATE OF HORACE P. GUIDRY,

Appellee.

PETITION FOR REHEARING ON BEHALF OF APPELLEE.

To the Honorable, the Judges of the United States Court of Appeals for the Fifth Circuit:

Mrs. Marowigne Edna McConnell Savoie, administratrix of the estate of Horace P. Guidry, appellee, respectfully petitions this Honorable Court for a rehearing of the above captioned matter, in which a judgment was rendered February 5, 1957.

The grounds of this petition are as follows:

(1) The decision of this Court is in violation of Amendment 7 of the United States Constitution which reads as follows:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

(2) The decision of this Court, although through another route, reaches the same result as the United States Supreme Court has already ruled is not the law of the land in *Texas Company v. Gianfala*, 222 F. (2d) 382, 350 U. S. 879, 76 S. Ct. 141; rehearing denied Jan. 30, 1956, 76 S. Ct. 346.

WHEREFORE, petitioner prays that this petition for rehearing should be granted.

CLAY, COLEMAN,
DUTREY & THOMSON,
/s/ JAMES JULIAN COLEMAN
By /s/ JACK W. THOMSON, JR.
Attorneys for Appellee,
1649 National Bank of Commerce Bldg.,
New Orleans, Louisiana.

CERTIFICATE.

I certify that the foregoing petition for rehearing is filed in good faith and not for delay and that a copy of the foregoing motion has been forwarded to counsel of record for the Appellant, Messrs. May & Carrere, California Company Building, New Orleans, Louisiana, this 25th day of February, 1957.

/s/ JACK W. THOMSON, JR.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16,188

THE TEXAS COMPANY,

Appellant,

versus

MRS. MAROWIGNE EDNA McCONNELL SAVOIE,
ADMINISTRATRIX OF THE ESTATE OF
HORACE P. GUIDRY,

Appellee.

BRIEF IN SUPPORT OF PETITION FOR REHEARING.

May It Please the Court:

This Honorable Court states in their decision that the decisive point on this appeal is "a question of fact" whether there was substantial evidence to support the jury finding that decedent was a member of the crew of the "Mary Virginia". In the same opinion the Court states that it has no authority, nor does any federal judge have authority to take out of the hands of the jury questions of fact even where there is no conflict in the evidence as long

as "reasonable minds may fairly draw conflicting inferences from the same evidence." After succinctly stating the law, the Court then holds that the issue is not for the jury to determine a correct inference but that the Court itself reverses the jury and makes its own inferences.

The Court states that "the undisputed facts in the case" were that the decedent was employed as a "roustabout" by The Texas Oil Company. This fact is very much disputed and in truth the plaintiff and the jury found that the real facts are that the decedent was employed and did perform important admiralty services aboard the "Mary Virginia"; that he actually was a seaman aboard the "Mary Virginia"; that he handled its navigation; that he employed either a captain or a relief seaman to man the lugger; and continued to do this throughout a major portion of his fifteen years of employment while he shipped on the "Mary Virginia". Does a "roustabout" employ a captain on a boat? This Court drew the inference that he did. The jury drew an inference that this was not so. Is this a question of fact?

This Court drew the inference that one man could handle a 44-foot lugger by himself while the jury came to the reasonable decision from the evidence presented that no one man could bring a 44-foot lugger up throughout a lake, stop and start many times near wells, tie up, untie, move to a new location and do everything necessary in navigating and handling a 44-foot lugger by himself. The jury knew it would take two men. The defendant, The Texas Company, knew it would take two men. This Court undoubtedly has drawn a different inference from the facts and the documentary evidence that The Texas

Company in their charter party called for two men aboard the lugger and when they supplied the seaman in the form of the decedent they would naturally be rebated for the cost and expense of the necessary seaman required to handle the 44-foot lugger, "Mary Virginia".

In fact this Court's opinion finds disputed facts even more favorable to the defendant than even the defendant claims as it has never been questioned that the decedent handled a line of the "Mary Virginia". (Defendant counsel's argument, R. p. 173). The only issue is whether questions of fact pertaining to seamen cases will be handled by directed verdicts and exclusively by district judges and this Court, or whether or not the constitutional right granted under the Seventh Amendment is to remain the right endowed and inherited by any United States citizen who desires a trial by jury. This Court may have an honest disagreement with the twelve men who heard this case and found the facts, but that is not the issue. The United States Supreme Court has sustained a seaman's right for trial by jury in the decision in the *Martin* case which went up from this same Court and it is respectfully submitted that the higher authority of that Court should be acceptable and govern the decision of this Court. The mere fact that District Judge J. Skelly Wright made a gratuitous statement in order not to be too harsh in overruling the motion for directed verdict is no ground for the inference that this learned District Judge was ignorant of his right when there was no issue of fact involved to order a directed verdict if he so desired. This gratuitous statement was in no way disrespectful of the United States Supreme Court's decision in the *Martin* case nor disrespectful of the rights granted to a litigant to use

the trial by jury granted to him under the Seventh Amendment of the United States Constitution.

The Texas Company knew that the decedent was continually working aboard the "Mary Virginia", saving them the expense of an extra seaman. This case is not in the category of men working on off-shore drilling rigs. The decedent was no more a passenger aboard, over the many years before his death, than an able bodied seaman shipping on a luxury liner. The mere fact that a seaman is killed off shipboard while performing his duties certainly does not relieve his employer from liability under the Jones Act.

This Court has erred in this opinion and true justice, in our humble opinion, calls for a rehearing and reappraisal in order that right shall prevail.

Respectfully submitted,

CLAY, COLEMAN,
DUTREY & THOMSON,
/s/ JAMES JULIAN COLEMAN
By /s/ JACK W. THOMSON, JR.,
Attorneys for Appellee,
1649 National Bank of Commerce Bldg.,
New Orleans, Louisiana.

CERTIFICATE.

I certify that a copy of the foregoing has been forwarded to counsel of record for the Appellant, Messrs. May & Carrere, California Company Building, New Orleans, Louisiana, this 25th day of February, 1957.

/s/ JACK W. THOMSON JR

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16,188

THE TEXAS COMPANY,

Appellant,

versus

MRS. MAROWIGNE EDNA McCONNELL SAVOIE, ADMINISTRATRIX OF THE ESTATE OF HORACE P. GUIDRY,

Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana.

(April 9, 1957.)

ON PETITION FOR A REHEARING.

Before HUTCHESON, Chief Judge, and HOLMES and BORAH, Circuit Judges.

HOLMES, Circuit Judge: The motion of appellee for leave to file twenty photostatic copies of the decision of the Supreme Court in *Senko v. LaCrosse Dredging Corporation*, No. 62, Oct. Term, 1956, should be overruled, because all the judges of this court already have printed

copies of said opinion, and to file twenty photostatic copies of the same would unnecessarily encumber the records in the clerk's office.

After a careful consideration of the petition for rehearing, including said Senko opinion, we think that the petition should be denied, because the applicable legal principle announced in *Senko v. LaCrosse Corporation* was the law which we announced and applied in the instant case. The factual distinction between the two cases is that in the one before us there was no evidence reasonably tending to show that the decedent was a member of the crew; whereas in the one cited there was sufficient evidence to support the finding, the Supreme Court holding that there was sufficient evidence in the record for the jury to decide that the petitioner was permanently attached to and employed by the dredge as a member of its crew. No question was raised as to whether the dredge involved had the status of a vessel at the time of the injury.

The essence of the decision in the Senko case was that the determination of whether an injured person was a member of the crew was to be left to the finder of fact, which means that juries have the same discretion in determining whether an injured person was a member of a crew as they have in finding negligence or any other fact. The essence of this discretion is that a jury's decision is final if it has a reasonable basis to support it, whether or not the appellate court agrees with the jury's estimate.

In the federal court a jury's finding of fact must have substantial evidence to support it; a scintilla of evidence

is not sufficient. There was substantial evidence to support the finding in *Senko v. LaCrosse Dredging Corporation*, because there was testimony introduced by petitioner tending to show that he was employed almost solely on the dredge, that his duty was primarily to maintain the dredge during its anchorage and for its future trips, and that he would have a significant navigational function when the dredge was put in transit. For this reason, the decision below was reversed, and the case was remanded for judgment on two issues which the appellate court did not reach in its disposition of the case.

The petition for rehearing is DENIED.

ORDER DENYING REHEARING.

Extract from the Minutes of April 9, 1957.

No. 16,188

THE TEXAS COMPANY

versus

MRS. MAROWIGNE EDNA McCONNELL SAVOIE, ADMINISTRATRIX OF THE ESTATE OF HORACE P. GUIDRY

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

FILED
JUL 15
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 250

MRS. MAROWIGNE EDNA McCONNELL SAVOIE,
Administratrix of the estate of HORACE P. GUIDRY,
Petitioner,

versus

THE TEXAS COMPANY,
Respondent,

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

July 12, 1957

John May and
Ernest A. Carrere, Jr.
409 California Building
New Orleans 12, Louisiana

D. Douglas Howard
May & Carrere
New Orleans, Louisiana
Of Counsel

INDEX

	Page
Reference to Opinion Below	1
Statement as to Jurisdiction	2
Statutes Involved	2
Question Presented for Review	4
Statement of the Case	4
1. Summary and Procedural History of the Case	4
2. The Facts	7
Summary of the Argument	15
Argument	16
1. There is no Conflict in Decision or Principle	28
2. No Important Question of Federal Law is Involved	29
3. The Decision Below is Clearly Correct	29
Conclusion	28
The Petition for Writ of Certiorari should be Denied	28

CASES CITED

	Page
Gahagan Construction Corp. v. Armao, 1948, First Circuit, 165 F. 2d 301	17
O'Donnell v. Great Lakes Dredge & Dock Co., 1943, 318 U. S. 36, 42-43, 63 S. Ct. 488, 492	24
Senko v. LaCrosse Dredging Corporation, 1957, 77 S. Ct. 415	15
South Chicago Coal & Dock Co. v. Bassett, 1940, 309 U. S. 251, 60 S. Ct. 544, 84 L. Ed. 723	15
Summerlin v. Massman Construction Co., 1952, Fourth Circuit, 199 F. 2d 715	17
The Texas Company v. Martin, 222 F. 2d 382, 350 U. S. 879, 76 S. Ct. 141; rehearing denied, January 30, 1956, 76 S. Ct. 346	15
Wilkes v. Mississippi River Sand & Gravel Co., 1953, Sixth Circuit, 202 F. 2d 383, certiorari denied 1953, 346 U. S. 817, 74 S. Ct. 29, 98 L. Ed. 344	17
Zientek v. Reading Co., 1955, Third Circuit, 220 F. 2d 183, Certiorari denied, October 10, 1955. Motion for leave to file petition for rehearing, denied January 30, 1956, 76 S. Ct. 345	22

STATUTES CITED

Jones Act, 46 U.S.C.A. §688	2
Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §902, et seq.	2

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No.

MRS. MAROWIGNE EDNA McCONNELL SAVOIE,
Administratrix of the estate of HORACE P. GUIDRY,
Petitioner,

versus

THE TEXAS COMPANY,
Respondent.

Upon Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

RESPONDENT'S BRIEF IN OPPOSITION

REFERENCE TO OPINION BELOW

The unanimous opinion of the Court of Appeals directing the dismissal of plaintiff's action appears at 240 F. 2d 674, and the opinion of said Court denying a rehearing on April 9, 1957 appears at 242 F. 2d 667. These opinions are set out in the Appendix of this brief on Pages 41 and 44, respectively.

JURISDICTION

The jurisdiction of this Court is invoked by Petitioner under c. 646, Act of June 25, 1948, 62 Stat. 928, 28 U.S.C. §1254 (1).

STATUTES INVOLVED

There are only two statutes directly involved in this case, namely, the Jones Act and the Longshoremen's and Harbor Workers' Compensation Act, the pertinent provisions of which are as follows:

Jones Act, Title 46 U.S.C.A.:

§688. Recovery for Injury to or Death of Seaman.

> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; * * * Mar. 4, 1915, c. 153 §20, 38 Stat. 1185; Jun. 5, 1920, c. 250 §33, 41 Stat. 1007.

Longshoremen's and Harbor Workers' Compensation Act, Title 33 U.S.C.A.:

§902. DEFINITIONS. When used in this chapter-

* * * *

(3) The term "employee" does not include a master or member of a crew of any vessel * * * .

(4) The term "employer" means an employer any of whose employees are employed in maritime employment in whole or in part upon navigable waters of the United States * * * .

§903. COVERAGE.

(a) Compensation shall be payable under this chapter in respect of disability or death of any employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States * * * . No compensation shall be payable in respect of the disability or death of —

(1) A master or member of a crew of any vessel * * * .

§904. LIABILITY FOR COMPENSATION.

(a) Every employer shall be liable for and shall secure the payment of his employees of the compensation payable under Sections 907, 908, and 909 of this chapter. * * *

§905. EXCLUSIVENESS OF LIABILITY.

The liability of an employer prescribed in §904 of this chapter shall be exclusive and in place of all other liability of such employer

to the employee * * * (March 4, 1927, c. 509, §2 et seq., 44 Stat. 1425 et seq.

QUESTION PRESENTED FOR REVIEW

In a suit under the Jones Act where the undisputed evidence was that Guidry, a roustabout, for The Texas Company, was killed while testing a gas pipe line on a *permanent platform*, did the Court of Appeals err in deciding that plaintiff had produced no evidence from which a jury could reasonably find that Guidry was a member of the crew of a vessel or that he was in the service of any vessel at the time of the instant accident?

STATEMENT OF CASE

1.

SUMMARY AND PROCEDURAL HISTORY OF THE CASE

Mrs. Savoie, Administratrix of the Estate of Horace P. Guidry, brought suit against The Texas Company, decedent's employer, for recovery under the Jones Act for the death of Guidry which occurred, according to her allegations, while decedent was acting as a member of the crew of the "Mary Virginia," a vessel operated by The Texas Company on Lake Salvadore.

Plaintiff alleged that on February 4, 1953, Horace P. Guidry was in the process of opening a valve at Well No. 20 in Lake Salvadore, and, as he put a wrench on said valve, it exploded in his face, blew him off the well plat-

form into the water and caused his death. She alleged among other things that The Texas Company negligently failed to furnish decedent a safe place to work, and that said valve was defective, which fact should have been known to the defendant.

As an alternative, plaintiff sought recovery under the Longshoremen's and Harbor Workers' Compensation Act and under the Louisiana State Workmen's Compensation Statute. These alternatives were reserved to her by agreement of counsel, and are not before this Honorable Court at this time.

The Texas Company defended the suit under the Jones Act on the grounds, first, that decedent was never a seaman or a member of the crew of a vessel while employed by The Texas Company; that he performed no duties of a seaman or member of the crew of a vessel for The Texas Company in the furtherance of navigation and commerce; that decedent's employment was not maritime in nature, and that the accident at issue did not happen aboard a vessel but on a fixed platform at a time when decedent was performing roustabout duties which had no connection whatever with the navigation of any vessel.

The Texas Company also defended the suit on the negligence issue.

The case was tried below before a jury. Motions for a directed verdict filed by defendant at the end of plaintiff's case and at the end of all of the evidence were denied.

The Jury found for the plaintiff in the amount of $80,000.

The defendant moved for judgment notwithstanding the verdict, for a new trial, and, in the alternative, for a remittitur.

Motions for judgment n.o.v. and for a new trial were denied. The Court required plaintiff to remit $40,000 or to stand a new trial.

In response to the said order, plaintiff entered a remittitur on March 21, 1956 (R. 231).

The Texas Company appealed to the Court of Appeals for the Fifth Circuit.

The Court of Appeals, after considering the record, briefs and arguments, unanimously awarded defendant judgment, dated February 5, 1957, reversing the Lower Court and remanding the case for further proceedings not inconsistent with its opinion.

Plaintiff petitioned for a rehearing, which was denied on April 9, 1957, by unanimous opinion of said Court.

Plaintiff then petitioned this Honorable Court for a Writ of Certiorari.

This brief in opposition is filed respectfully to demonstrate why the petition for a Writ of Certiorari should be denied.

2.

THE FACTS

It is undisputed that Guidry, the decedent, was killed as a result of an accident which occurred on a fixed platform in Lake Salvadore while testing a gas pipe line which was to be used to furnish gas for certain re-working operations of an oil well at the location. This permanent platform was built on piling driven into the bed of the lake.

Decedent's employer, The Texas Company, an integrated oil producing corporation which carries on producing operations in Louisiana as well as in many other States and foreign countries.

The company has oil and gas production in the said Lake Salvadore, a shallow lake in South Louisiana.

After wells are completed, permanent platforms, such as the instant platform, are constructed, and a "Christmas tree," which regulates the flow of the wells, and other equipment used in the operations are housed on the platforms. This equipment is the same equipment used in Oklahoma and other inland oil and gas producing States for the same purpose as is used at the Lake Salvadore field. There is nothing unique or maritime about the equipment.

If this accident had happened in Oklahoma, it would have no maritime significance whatever, and the Jones Act would have no application.

In this case the record reveals that The Texas Company had to supply automobile and water-taxi transportation for its roustabouts in order to transport them from one well location to another, and to and from the lease base. It was shown that the company had approximately thirty well platforms in Lake Salvadore.

Mr. Guidry, the decedent, was employed by The Texas Company as a roustabout. He was the head roustabout in the Lake Salvadore operation. He was employed to maintain the equipment on the platforms, and his job consisted of checking chokes, regulating the pressure on the wells, changing chokes, scraping paraffin which accumulates in the well holes, painting the equipment, and doing miscellaneous maintenance work. Exhibit "Defendant B" is the log of his activities kept by *decedent* and his supervisor. It contains a day-by-day resume of the work performed by decedent and *is signed by him.* The Court's attention is invited to the analysis of these work sheets set out in the Appendix herein at page 32 et seq.

Guidry was The Texas Company representative in the inspection and maintenance of the equipment described hereinabove.

In order to transport Guidry and other employees of The Texas Company in this particular area from one location to another, The Texas Company chartered a forty-four foot lugger, the Mary Virginia, from John Kennedy of New Orleans.

Under the terms of the charter, Kennedy agreed to furnish the crew of the vessel (Exhibit Defendant 1). The

Texas Company agreed to pay him $30.00 per day when a crew of two men was aboard, and $23.00 per day when he had one man aboard. The purpose of the charter was "to perform transportation services."

Kennedy, an independent contractor, at the request of decedent, Guidry, hired decedent's brother, Henry Guidry, an experienced lugger pilot and operator, to handle the boat, and a man by the name of Matherne to act as relief for Henry Guidry.

There was generally one man aboard the boat, either Guidry or Matherne, except on two days at intervals, when both of these men were aboard.

On the day of the accident, Horace Guidry, the decedent, boarded the Mary Virginia in the morning with Paul Badeaux, helper, at The Texas Company landing. Horace told Henry, the boat operator, where he wanted to go. The boat then took off on its approximately one hour's run to Lake Salvadore oil field. During this travel time decedent and Badeaux were paid portal-to-portal pay at the minimum rate, in compliance with governmental regulations; the decedent's workday, at his regular rate of pay, commenced when he reached the Lake Salvadore field.

The day was uneventful until about two o'clock p.m. Up until that time, decedent and Badeaux had scraped paraffin from certain wells on the permanent platforms mentioned hereinabove.

About that time, Horace told Henry to go to Well No. 20, which he did. Badeaux tied up the Mary Virginia as decedent stepped on the permanent platform.

As mentioned hereinabove, the permanent platform contained the usual "Christmas tree" and the end of a gas pipe line which ran from the company's lease tank battery, along the bottom of Lake Salvadore, to this platform. The pipe line, which consisted of two-inch pipe, rose from the bottom of the lake, through the platform, to a point about one foot above it. Then an "L" was attached to the riser, which had the effect of bending the pipe line on a ninety-degree angle from the vertical riser to a horizontal extension. On this horizontal extension was a valve, and beyond the valve, in the same horizontal plane, was an additional short length of pipe which vented the pipe line to the open air.

This pipe line is not generally used. It is placed in use only to supply fuel in the event that certain re-working of the well is in progress.

While Guidry was on the platform, Mr. Lottinger, his superior, who reached the platform site about the time of Guidry's arrival, requested that he test the valve in order to determine if there was any pressure in the line.

Guidry took his wrench from a tool box, applied it to the valve, and, at this point an explosion or blowout occurred, the pipe line parted at the "L," and either the pressure or a blow from the pipe line knocked Guidry overboard and killed him or caused him to drown.

Henry Guidry, decedent's brother, testified that he had been operating boats in South Louisiana for many years. This Honorable Court, undoubtedly, will take judicial notice of the fact that experienced boatmen have been handling luggers in the bayou country of Louisiana unassisted, as a matter of second nature. Their luggers are their means of transportation, just as an automobile is to most of us who live in the city. Guidry (the boat operator, not the decedent) needed no help to navigate the lugger from one location to another.

Guidry (the boat operator) testified, further, that he piloted and steered the boat from one place to another (R. 48), and that he operated the engine.

Plaintiff attempted to show that he received orders from his deceased brother. Actually, a reasonable and proper reading of the record will show that the only so-called order that he received from his brother was a request to take him to a certain well, after which request the boat operator would navigate the boat to that location.

Under cross-examination, he was asked:

"Q. What type of work did your brother do for The Texas Company?"
"A. *He worked on the wells.*" (R. 54).
"Q. (Through interpreter) And his brother, Horace, did not work on the boat?"
"A. *Horace, he worked on the wells.* He would start the engines for the well." (R. 58):

"Q. *Now, when he says 'the engines for the wells', just so there will be no mistake, that has nothing to do with the boat angle?"*
"A. *No, not that. Not Horace, no. That work on the well, that.*" (R. 58).

The boat operator was asked:

"Q. Tell us whether or not you have ever seen your brother, Horace, tie up the boat."
"A. Sometimes, every once in a while." (R. 50).

The witness testified that when they arrived at Well No. 20, Paul Badeaux tied up the boat. He stated, further, that Badeaux, who was assisting the decedent for the first time on the day of the accident, and the decedent had no duties aboard the boat.

"Q. What would Horace Guidry, James Hatty (the man that Badeaux replaced on the instant day) and Badeaux do while the boat was going from one well location to another?"
"A. I don't know. I didn't see that. I was below sometimes."
"Q. Where would they be while he was operating the boat from one location to the other?"
"A. They were on the deck waiting to go to the well."
"Q. And they did nothing else other than to wait to get to the well?"
"A. Yes, they would wait. When we would arrive, they would work on the well." (R. 64-65)

Mr. Lyman Porter, Assistant District Superintendent of the Harvey District of The Texas Company at the time of the accident, testified that the Lake Salvadore field was in his district. He did not have immediate contact with the decedent but, as a matter of Company policy, he testified, as follows:

"Q. Did your roustabouts on that lease operate boats?"
"A. No."
"Q. Were they employed to operate boats?"
"A. No, sir."
"Q. And did Mr. Guidry, the decedent, operate a boat for The Texas Company?"
"A. Not to my knowledge, no, he was not supposed to operate a boat." (R. 83).

He reiterated:

"Q. Now, you had no intention of implying that Mr. Guidry was a crew member on this boat, did you?"
"A. Oh, no, Mr. Guidry was not a crew man on the boat." (R. 95).

He added, on re-direct examination:

"A. He wasn't hired to be a crew man." (R. 96).

In this connection, we submit that the analysis of work, taken from Guidry's own records and annexed in the Appendix hereto, definitely shows what Mr. Guidry was hired

to do and what he did do for The Texas Company. He was an oil field worker strictly, and not a boat crewman.

Paul Badeaux testified that he worked one day with decedent (R. 114). In answer to the question:

"Q. And did you operate the boat?"
"A. No, sir." (R. 115).

He continued, as follows:

"Q. *Did the decedent, Guidry, operate the boat, and by that I mean the man that was killed?*"
"A. *That was killed?* No."
"Q. Who operated it?"
"A. It was his brother."
"Q. Who started the engine on the boat?"
"A. The Mr. Guidry, the one that run the boat."
"Q. That is not the man that was killed, but the other Mr. Guidry?"
"A. No, the other man."
"Q. *Who steered or piloted the boat?*"
"A. *Him. The one that run the boat do everything — he run the motor and he steered the boat.*"
"Q. Now, what did you and Horace do when you went from one location to the other on the boat?"
"A. We scraped paraffin."
"Q *When you were on the boat going from one well to the other, what did you do?*"
"A. *When we were on the boat from one well to the other, we just sat down until we got to the well.*"
"Q. *You just sat down in the boat?*"
"A. *That is right.*" (R. 115-116).

He stated, further, that Horace would merely tell Henry where to go and that Henry took them to the indicated locations. He concluded by reaffirming that he was not employed by The Texas Company to handle lines on the boat. (R. 119).

SUMMARY OF ARGUMENT

1. This petition for Writ of Certiorari should be denied because the decision of the Court of Appeals is not in conflict with any other decision or principle of law.

A reading of that opinion will disclose that in rendering the instant decision the Court of Appeals simply considered whether or not the plaintiff had presented sufficient evidence to sustain the jury's verdict that Guidry was "a member of the crew of a vessel." It accepted without question the rule of prior decisions, including, *The Texas Company* v. *Gianfala, Wife of Martin*, 222 F. 2d 382, 350 U. S. 897, 76 S. Ct. 141; *South Chicago Coal & Dock Company* v. *Bassett*, 309 U. S. 251, 60 S. Ct. 544; and *Senko* v. *LaCrosse Dredging Corporation*, (1957) 177 S. Ct. 415.

The Court not only accepted the opinions set out in the said cases, but in its application thereof properly followed the precedent set out by those and other cases as will be demonstrated more fully below.

2. No important question of Federal law is involved in this case. As a reading of the opinion of the Court of Appeals will disclose, no question of law was involved. The only question presented to the Court of Appeals was whether or not the evidence, if taken as true, constituted evi-

dence from which a reasonable man could find that decedent was "a member of a crew of a vessel" as that phrase has been defined heretofore by decisions of this and other Federal Courts.

In considering that question, the Court of Appeals reviewed the pertinent decisions and, accepting all of their principles as established, concluded that under the tests laid down in those decisions, this plaintiff had failed to present sufficient evidence that decedent was a member of the crew of any vessel and that decedent was in the service of said vessel at the time of his death.

3. The decision of the Court of Appeals was clearly correct. The plaintiff's own uncontested evidence established that at the time of the accident Guidry was working on a *permanent platform* built on piles driven into the bottom of Lake Salvadore. The work that he was performing was the work of a roustabout in testing the gas pipe line. This work had nothing whatever to do with navigation and commerce, and was totally unrelated to the work done by a member of a crew of a vessel.

ARGUMENT

The instant case presents only the said question as to the sufficiency of the evidence to support the jury's findings that decedent was a member of the crew of a vessel. There is no conflict between this and other decisions or principles, and no important question of Federal law is involved herein.

The vast discretionary powers of this Honorable Court are given to it to be exercised with reference to Writs of Certiorari only where there are special and important reasons therefor, as for example, when a Lower Court has decided a case in a manner not in accord with the applicable decisions of the Supreme Court, or where the Court of Appeals has rendered a decision in conflict with the decision of another Court of Appeals on the same matter.

Such is not the case here.

Further, no additional action is needed by this Court in cases of this kind for guidance of the Bar.

The principles under which this case has been decided are well established.

In *South Chicago Coal & Dock Company* v. *Bassett,* (1940), supra, this Honorable Court held that whether or not a petitioner was a member of a crew was not a question of law, but a question of fact, and the record of that case disclosed that "There was enough (evidence) to sustain the Deputy Commissioner's ruling."

In *The Texas Company* v. *Gianfala, Wife of Martin,* (1955), supra, this Court reiterated its said prior holding by its per curiam under the authority of the Bassett case; *Summerlin* v. *Massman Construction Co.*, 195 F. 2d 715; *Wilkes* v. *Mississippi River Sand & Gravel Co.*, 202 F. 2d 383; *Gahagan Construction Corporation* v. *Armao,* 165 F. 2d 305.

The rule of law is established beyond any possibility of contest; that is, that the question of whether or not a man is a seaman and a member of the crew of a vessel, is a question of fact for the jury, and not a matter of law.

In the instant case the Court of Appeals heard the case under that rule of law and stated: *"The decisive point on this appeal is whether there was substantial evidence to support the jury's finding that decedent was a member of the crew of the Mary Virginia, which is a question of fact."*

Thereafter, in its opinion, the Court recognized the principle that *"If reasonable minds may fairly draw conflicting inferences from the same evidence, requiring different verdicts, the issue is for the jury to determine the correct inference."*

Having annunciated the said principle, which conforms to the law as set out by this Honorable Court, the Court held that there is no evidence to support the jury's finding that Guidry was a member of the crew.

Further, the decision in the instant case is not in conflict with *Senko* v. *LaCrosse Dredging Corporation*, (1957), supra, wherein this Honorable Court held that there was testimony tending to show that Senko was employed almost solely on dredge in question, that his duties were primarily to maintain the dredge during its anchorage for its future trips, that he would have a significant navigational function when the dredge was put in transit, and that there was sufficient evidence to support the jury's finding that he was a member of the dredge's crew and entitled to the benefits of the Jones Act.

The Senko case recognized the principle that a jury's decision is final, if it has a reasonable basis, whether or not the Appellate Court agrees with the jury's estimate.

On rehearing the Court of Appeals stated unequivocally in the instant case that the legal principles announced in Senko was the law applied in the instant case. The Court held:

> "After a careful consideration of the petition for rehearing, including said Senko opinion, *we think that the petition should be denied, because the applicable legal principle announced in Senko v. LaCrosse Corporation was the law which we announced and applied in the instant case.* The factual distinction between the two cases is that in the one before us there was no evidence reasonably tending to show that the decedent was a member of the crew; whereas in the one cited there was sufficient evidence to support the finding, the Supreme Court holding that there was sufficient evidence in the record for the jury to decide that the petitioner was permanently attached to and employed by the dredge as a member of its crew. No question was raised as to whether the dredge involved had the status of a vessel at the time of the injury.
>
> "The essence of the decision in the Senko case was that the determination of whether an injured person was a member of the crew was to be left to the finder of fact, which means that juries have the same discretion in determining whether an

injured person was a member of a crew as they have in finding negligence or any other fact. The essence of this discretion is that a reasonable basis to support it, whether or not the appellate court agrees with the jury's estimate." (Italics supplied).

The Court concluded on rehearing:

"In the federal court a jury's finding of fact must have substantial evidence to support it; a scintilla of evidence is not sufficient. There was substantial evidence to support the finding in Senko v. LaCrosse Dredging Corporation, because there was testimony introduced by petitioner tending to show that he was employed almost solely on the dredge, that his duty was primarily to maintain the dredge during its anchorage and for its future trips, and that he would have a significant navigational function, when the dredge was put in transit. For this reason, the decision below was reversed, and the case was remanded for judgment on two issues which the appellate court did not reach in its disposition of the case.

"The petition for rehearing is DENIED."

We respectfully submit that the Supreme Court has laid down the foundation for the trial of cases such as the instant case, and respondent is fully mindful of the fact that a jury must decide whether or not a man is a member of the crew of a vessel.

However, the Supreme Court, we submit, did not intend to do away with Federal procedures and to write out of our procedural law the directed verdict and other devices for the protection of defendants when juries may fall into error.

Since the decision in the Martin case the policy of the District Judges appears to be to submit all Jones Act cases to the jury and to be very leery of making use of its Court's prerogative to grant directed verdicts.

Courts are not infallible, Deputy Commissioners, who are experienced in finding facts relative to claims under the Longshoremen's Act, are not infallible, and juries, certainly, are not infallible.

For the sake of illustration, if a jury finds that black is white or that two plus two equal seven, that jury is obviously in error, and the error must be corrected by higher authority in the interest of justice.

The Supreme Court has recognized that factor, and in its per curiam in the Martin case, the Court cited *Wilkes* v. *Mississippi River Sand & Gravel Company*, supra, in which the Court denied certiorari. That case held:

> "In short, a Commissioner's conclusion that one is or is not 'a master or member of a crew' is not binding upon a reviewing court if the basic facts competently found by the Commissioner rightly call for a different conclusion. In Schantz v. American Dredging Co., 3 Cir., 138 F. 2d 534, 536, after quoting from Warner Co. v. Norton, supra, Judge

> Goodrich said: 'The same rule will apply to findings of judge or jury when plaintiff's effort is to escape the Longshoremen's Act, rather than to get under it, and the litigation is a law suit instead of an application for compensation.' "

Further, in *Zientek* v. *Reading*, (1955), 220 F. 2d 183, certiorari denied October 10, 1955, 350 U. S. 846, 76 S. Ct. 55, petition for rehearing denied January 30, 1956, 350 U. S. 960, 76 S. Ct. 345, the Supreme Court refused to disturb the holding of the Third Circuit, which had reversed the findings of the jury and the judgment of the Lower Court to the effect that Zientek was a member of a crew of a vessel and entitled as such to Jones Act recovery, for there was no evidence upon which a jury could have found properly that Zientek was a crew member.

The Zientek case was finally decided on the same day as the Martin case.

Therefore we submit that the Circuit Courts must be this Honorable Court's "instruments" for reviewing the fact findings of juries, and must reverse the said findings when they are in error.

We submit that when the Circuit Courts make a determination under correct principles of law, the decisions of the said Courts should be allowed to become final.

Still further, assuming for the purpose of argument that decedent was a member of the crew of the Mary Virginia, The Texas Company vigorously contends that his personal representatives are not entitled to the Jones Act relief,

because at the time of his death decedent was not acting in the service of the vessel, and that there is no evidence to support the jury's finding that the decedent's work, which consisted of handling a valve on a natural gas pipe line located on the said platform, was being performed for the purpose of keeping the vessel in navigation. Respondent does not argue with the principle of law "that a seaman has been defined broadly as a person whose occupation is to assist in the management of vessels at sea." Respondent recognizes that pursers, surgeons, firemen, chamber maids and other employees aboard ship, used in the furtherance of the main object of the enterprise in which the vessel is engaged, have been found to be seamen and members of the crew, because under certain factual circumstances, such persons are actually performing services which aid in keeping their vessels in navigation and commerce.

But respondent urges that by no stretch of the imagination could roustabout work performed on the instant platforms be connected with the water-taxi service of the Mary Virginia. Certainly Mr. Guidry was not aboard the vessel to further paraffin scraping or to further any of his other duties. He was aboard the vessel merely as a means of transportation.

The law on the subject is clear to the effect that to qualify as a member of a crew, a seaman must have been aboard a vessel primarily to aid in its navigation, and the test of whether or not such seaman is entitled to recovery under the Jones Act while working off the vessel and on a fixed permanent platform is: was he in the service of the vessel at the time of his accident?

While it may be true that a man aboard a dredge, for example, whose sole duties are to see that shells are brought up from the bottom and are distributed over the cargo bins properly and that the Government, who is purchasing the shells, is getting full measure, is a member of the crew of said dredge, because he is aboard to assist in carrying out the vessel's over-all purpose, respondent sees no connection between such decision and the facts in the instant case.

A dredge has specialized equipment for dredging shells, and its operators must employ the types of men needed to service such vessels. Such is not the case here.

Further, a wine steward aboard the steamship "United States," for example, is aboard that ship to care for the needs of its passengers, and he is an integral part of the service rendered to the passengers. Without doubt, he is a member of the crew of that vessel for he is furthering its purpose.

If the man who measures shells on a dredge and cares for their stowage, in the first example, or the wine steward, in the second example, is injured on shore in the service of his ship and in furtherance of the ship's interests to keep it in navigation and commerce, he, as a member of the crew, would be entitled to Jones Act protection under the holding of *O'Donnell* v. *Great Lakes Dredge & Dock Co.*, (1943), 318 U. S. 36, 42-43, 63 S. Ct. 488, 492:

> "The right of recovery in the Jones Act is given to seamen as such and, as in the case of maintenance and cure, the admiralty jurisdiction over the suit depends not on the place where the injury is inflicted but on the nature of the service

and its relationship to the operation of the vessel plying in navigable waters."

In that case, a seaman was injured while ashore on the dock adjoining his moored ship, while he was assisting in the repair of a gasket on a device used in discharging a cargo of grain. His representatives were permitted to recover because he was working on said equipment which was used by the ship in transporting cargo and in the handling of the cargo. That was the basic purpose for which the ship was in navigation.

Respondent fully agrees with that decision and recognizes its theory that Jones Act recovery is not limited to accidents occurring on navigable waters. It is definite, now, that recovery does not hinge on situs, but on the nature of the service being rendered by the members of the crew and its relationship to the operation of the vessel.

The O'Donnell case, however, has no application herein. The Mary Virginia was a common, ordinary lugger. It had no special equipment. The only reason for its charter by The Texas Company was for transportation of its employees from one well platform to another.

When Guidry stepped off the Mary Virginia and on the permanent well platform, there was absolutely nothing for him to do and no service for him to perform to keep the Mary Virginia in operation on navigable waters. When he went upon the platform, his sole function was to do the work of an oil field roustabout, to check the valves on the oil well, to scrape paraffin, and to check the valve on the natural gas pipe line.

Whether or not there was pressure on the natural gas pipe line, whether or not there was paraffin in the well hole, and whether or not the chokes needed changing had no connection with the navigation of any vessel and had no bearing on the maintenance or preservation of the hull, machinery and tackle of any vessel.

The instant lugger was merely a water-taxi to transport employees.

With reference to the determination of whether or not a seaman on land is in the service of his vessel, suppose, for example, in the Lake District of Canada where there are hundreds of small islands, that a minister of the gospel makes use of the services of a chartered boat to carry him from island to island to preach the gospel. On a certain day, he requests the boat operator to bring him to a named island. Upon arrival, he steps off the boat and ties the line, which the boat operator throws to him, to the dock. He goes to a mission church, and while in the pulpit in the act of preaching to his congregation, the pulpit collapses and he is injured. Could it be said that a minister of the gospel is a seaman and a member of the crew because he tied up the line of the vessel "once in a while"? Could the vessel that brought him to the island be called a gospel preaching vessel? Could it be said that the minister was in the service of the vessel because he was preaching the gospel at the time of his injury, which activity was in furtherance of the vessel's over-all purpose?

Certainly the occasional handling of a line, even if such activity was proved in the instant case, would not be sufficient evidence upon which to determine that a man is

a seaman and member of the crew, for in the Bassett case, supra, this Honorable Court held: "These duties, as the Court of Appeals said, did not pertain to navigation, aside from the incidental tasks of throwing a ship's rope or making the boat fast, and service of the sort which could be readily performed or aided by a harbor worker."

Respondent respectfully submits that the minister in the example above was not a member of the crew under the Jones Act and that he was not in the service of the vessel at the time of his accident.

Respondent submits, further, that Guidry was a passenger on the Mary Virginia, not a member of its crew, and he was not in the service of the vessel at the time he met his unfortunate death within the meaning of the O'Donnell case.

The decision of the Court of Appeal was clearly correct in holding that Guidry was employed to work on the platforms, not on the vessel, and that there is no substantial evidence to support the jury's findings that he was a member of the crew.

The Court was equally correct in holding that Guidry was merely a passenger on the Mary Virginia.

Congress has passed special laws to cover employees in Guidry's status in the Outer Continental Shelf area and has protected them in enclosed areas, such as in the instant case, by the provisions of the Longshoremen's and Harbor Workers' Compensation Act. Decedent's rights under the latter Act and under the State laws have been specially reserved

to his representatives, who should seek their remedy under said laws and not under the Jones Act.

Finally, the District Court in its discretion required petitioner to remit $40,000.00 which petitioner has done.

Petitioner attempts to avoid her act, and to raise issues of quantum here. The District Judge gave the claimant the benefit of every doubt in reaching the decision on quantum (R. 229 et seq.). We respectfully submit that such a question has no place here. Further, petitioner is in error in representing to this Court that decedent earned $920.01 in 1953 up to his death, for as petitioner well knows, that amount included certain death benefits that The Texas Company paid under its employer-employee agreements. The Court based its decision on this issue on the stipulated fact that Mrs. Savoie had left her husband (decedent, Guidry), and is not entitled to recovery, and on the fact that Guidry had earned $4,700.00 during the full calendar year next preceding his death. Said decision is within the Court's sound discretion and should not be reviewed in any event.

CONCLUSION

The petition for Writ of Certiorari should be dismissed for these reasons:

1. The decision of the Court below involves no conflict with any other decision or principle, but is in complete harmony with the law in cases upon the subject of the meaning of the phrase "member of the crew of a vessel."

2. No important question of Federal law is involved in this case. This case is concerned only with whether or not the evidence when judged in the light of the principles and precedents laid down by earlier decisions of this and other Federal Courts, is sufficient to enable reasonable men to differ upon whether or not Guidry was a member of the crew of a vessel and whether or not he was in the service of said vessel at the time of his death.

3. The Court below was correct in holding that where the evidence clearly established that Guidry was not a member of the crew of a vessel and not in the service of the vessel at the time of his death, he could not recover under the Jones Act.

Respectfully submitted,

Ernest A. Carrere, Jr.
Attorney for
The Texas Company

John May
D. Douglas Howard
May & Carrere
New Orleans, Louisiana
Of Counsel

CERTIFICATE

I, the undersigned attorney of the Bar of the Supreme Court of the United States, certify that the above and foregoing brief in opposition to petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was served upon the attorneys for petitioner for Certiorari herein on July 15, 1957, by depositing same in the United States mail, at New Orleans, Louisiana, with first-class postage prepaid, addressed to counsel of record at their post office address as follows: Mr. James J. Coleman, National Bank of Commerce Building, New Orleans 12, Louisiana; Mr. Jack W. Thomson, Jr., National Bank of Commerce Building, New Orleans 12, Louisiana; Mr. Louis Dutrey, National Bank of Commerce Building, New Orleans, Louisiana, and Mr. Elwood R. Clay, National Bank of Commerce Building, New Orleans. Louisiana.

New Orleans, Louisiana

July 15, 1957

_____

Ernest A. Carrere, Jr.

APPENDIX I

ANALYSIS OF EXHIBIT DEFENDANT B

ANALYSIS OF WORK PERFORMED BY HORACE GUIDRY FROM NOVEMBER 1, 1952 TO JANUARY 31, 1953

Date	Work Performed
	Hr. changing charts on Wells No. 3 - 18 -8 - 21
11/1/52	7 Hrs. scraping paraffin, **checking chokes and pressure** on Wells No. 13 - 24 - 26 - 28 - 30; 1 Hr. changing chokes and checking **Well No. 20**
11/4/52	8 Hrs. Scraping paraffin, **checking chokes and press.** on Wells No. 13 - 21 - 30
11/5/52	5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 8 - 27 - 29; 2 Hours dropping bontal sticks in wells No. 8 - 15 - 19 - 23; 1 Hr. switching at substations A & D & checking pressure on **Well No. 20**
11/6/52	6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 7 - 8 - 9 - 12; 1 Hr. changing chokes on Wells No. 5 - 14 - 25 - 29 - 30; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
11/7/52	8 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 5 - 6 - 10 - 14 - 16 - 17
11/8/52	7 Hrs. Rigging up & swabbing Well No. 26; 1 Hr. **checking Wells** No. 18 - **20** - 32 - 8

Date	Work Performed
11/11/52	7 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 13 - 21 - 30; 1 Hr. taking seat out of regulator valve on Well No. 3
11/12/52	6 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 5 - 7 - 9 - 17; 2 Hrs. placing seat in regulator valve, adjusting regulators & checking Well No. 3
11/13/52	6 Hrs. rigging up & swabbing Well No. 26; 1 Hr. working on Well No. 15 gas line; 1 Hr. changing charts on Wells No. 8 - 18 - 21 - 3
11/14/52	8 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 6 - 10 - 12 - 14 - 16 - 28
11/15/52	8 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 22 - 24 - 27 - 29 - 30 - 3
11/18/52	1½ Hrs. Regulating Purger on No. 3; 1½ Hrs. changing charts in field; 3 Hrs. taking samples & Press; 2 Hrs. Scraping No. 8
11/19/52	6 Hrs. taking gas readings on Wells No. 1 - 4 - 15 - 19 - 21; 1 Hr. changing recorder & choke on Well No. 3; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
11/20/52	5 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 2 - 4 - 5 - 17; 2 Hrs. changing chokes & checking pressure on Wells

Date	Work Performed
	No. 3 - 8 - **20** - 26; 1 Hr. taking gas reading on Well No. 18
11/21/52	4 Hrs. scraping paraffin, **checking chokes & pressure** on Wells No. 13 - 29 - 30; 1½ Hr. **changing chokes & checking pressure** on Wells No. 8 - **20** - 26; 1½ Hr. changing batteries & repairing lights on Well No. 32 location No. 33; 1 Hr. changing charts on No. 8 - 3 - 18 - 21
11/22/52	4 Hrs. repairing flow line & gas line on Well No. 18; 3 Hrs. Scraping paraffin, **checking chokes & pressure on Wells** No. 16 - 22 - 27; 1 Hr. changing charts on Wells No. 3 - 18 - 8 - 21
11/25/52	8 Hrs. Scraping paraffin & changing charts
11/26/52	3 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 5 - 16; 2 Hrs. dropping bontal sticks, **changing choke** & working on No. 23 valve; 1 Hr. changing charts on No. 3 - 8 - 18 - 21; 1 Hr. changing wire guide & working on lubricator; 1 Hr. checking press. on Wells No. 8 - **20** - 26
11/27/52	5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 3 - 7 - 9 - 12; 1 Hr. working on No. 15 gas line; 1 Hr. **changing choke** on Well No. 8 & checking wells No. **20** & 26; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21

Date	Work Performed
11/28/52	7 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 6 - 10 - 14 - 17 - 29; 1 Hr. changing charts on Wells No. 8 - 3 - 18 - 21
11/29/52	7 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 13 - 22 - 24 - 27 - 30; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
12/2/52	6 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 17 - 13 - 27; 2 Hrs. changing choke on Well No. 19 & checking pressures on Wells No. 8 - 15 - 20 - 21
12/3/52	5 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 14 - 22 - 30; 2 Hrs. taking gas readings on Wells No. 8 & 15; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
12/4/52	7 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 3 - 5 - 7 - 9 - 12; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
12/5/52	5½ Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 6 - 10 - 16 - 29; 2½ Hrs. taking gas reading on Well No. 26 & changing charts on Wells No. 3 - 8 - 18 - 21
12/6/52	5 Hrs. Scraping paraffin, checking chokes & pressure on Wells No. 2 - 4 - 21 - 24; 1 Hr. switching at substations A & D; 1 Hr. changing

Date	Work Performed
	chart on Wells No. 3 - 8 - 18 - 21; 1 Hr. taking samples & checking Wells No. 26b & 8
12/9/52	6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 14 - 30; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21; 1 Hr. switching at substation
12/10/52	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 2 - 3 - 7 - 9 - 12; 1 Hr. **checking pressures on Wells No. 8 - 20** - 21
12/11/52	6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 26 - 16 - 17 - 13; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21; 1 Hr. switching wells at substations
12/12/52	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 4 - 5 - 10 - **20** - 22; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
12/13/52	5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 24 - 27 - 29; 2 Hrs. dropping bontal sticks in Wells No. 8 - 15 - 19 - 23; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
12/16/52	4 Hrs. **checking chokes & pressure**; 2 Hrs. taking gas readings on Well No. 26; 1 Hr. changing batteries on light at location No. 33; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21

Date	Work Performed
12/17/52	7 Hrs. taking gas readings on Wells No. 4 - [illegible] - 15 - 18 - 19 - 21; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
12/18/52	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 5 - 7 - 9 - 12 - 14 - 22; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
12/19/52	6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 13 - 17 - 27 - 30; 1 Hr. **changing chokes** on Well No. 8 - 21 and checking light at No. 33 location; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
12/20/52	4 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 6 - 16 - 29; 3 Hrs. **changing chokes & checking pressure & chokes on wells;** 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
12/23/52	7 Hrs. Scraping paraffin, **checking choke & pressure** on Wells No. 7 - 9 - 12; 1 Hr. changing charts on Well No. 3 - 8 - 18 - 21
12/24/52	8 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 3 - 4 - 5 - 6 - 10 - 14
12/26/52	4 Hrs. working on Orifice meter & salt water system; 3 Hrs. working on 32 & 18 & **checking pressures on wells;** 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21

Date	Work Performed
12/27/52	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells 13 - 16 - 17 - 27 - 29; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
12/30/52	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 10 - 21 - 30; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
12/31/52	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 3 - 7 - 9 - 12 - 14; 1 Hr. changing charts on Wells No. 3 - 8 - 18 21
1/1/53	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 6 - 16 - 17 - 22 - 27; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
1/2/53	6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 2 - 5 - 20 - 24; 2 Hrs. working at Lease
1/3/53	8 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells 13 - 19 - 26 - 29 - 30
1/6/53	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 13 - 7 - 9; 1 Hr. working on lubricator
1/7/53	5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 5 - 12 - 14 - 17; 2 Hrs. taking gas readings on Well No. 8; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21

Date	Work Performed
1/8/53	4 Hrs. Scraping paraffin, **checking chokes & pressure on** Wells No. 3 - 6 - 27; 2 Hrs. taking gas readings on Wells No. 4 - 15; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21; 1 Hr. checking Wells No. __ - 23 & taking sample on No. 4
1/9/53	8 Hrs. connection work & cleaning up on Lease
1/10/53	4 Hrs. making connections & painting at Lease; 3 hrs. **checking chokes & pressure &** switching at substation; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
1/13/53	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 2 - 5 - 30; 1 Hr. changing chart on Wells No. 3 - 8 - 18 - 21
1/14/53	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 7 - 9 - 12 - 14 - 20; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
1/15/53	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 4 - 6 - 10 - 16 - 17; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
1/16/53	8 Hrs. Scraping paraffin & working on Well No. 18
1/17/53	5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 22 - 24 - 27 - 29; 2 Hrs.

Date	Work Performed
	changing chokes & 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
1/20/53	5 Hrs. Scraping paraffin & working on Well No. 18; 2 Hrs. changing & **checking chokes in wells;** 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
1/21/53	6 Hrs. Scraping paraffin & working on Well No. 18; 2 Hrs. **checking wells, changing chokes** & switching at substation
1/22/53	5 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 7 - 9 - 12; 3 Hrs. **changing chokes** & checking Wells No. 8 - 4 - 19 - 23
1/23/53	5 Hrs. cleaning & painting at Lease; **3 Hrs. making connections**
1/24/53	8 Hrs. cleaning & painting at Lease
1/27/53	6 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 13 - 17; 1 Hr. working on Well No. 26; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
1/28/53	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 6 - 16 - 27 - 30; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21

Date	Work Performed
1/29/53	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 5 - 10 - 14 - 22 - 29; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21
1/30/53	7 Hrs. Scraping paraffin, **checking chokes & pressure** on Wells No. 2 - 3 - 7 - 9 - 12; 1 Hr. changing charts on Well No. 3 - 8 - 18 - 21
1/31/53	7 Hrs. taking gas readings on Wells No. 1 - 18 - 19 - 21 - 26; 1 Hr. changing charts on Wells No. 3 - 8 - 18 - 21

APPENDIX II

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16188

THE TEXAS COMPANY,
Appellant,

versus

MRS. MAROWIGNE EDNA McCONNELL SAVOIE,
Administratrix of the estate of HORACE P. GUIDRY,
Appellee.

Appeal from the United States District Court for the
Eastern District of Louisiana

(February 5, 1957)

Before HUTCHESON, Chief Judge, and HOLMES and BORAH, Circuit Judges.

HOLMES, Circuit Judge: The appellee, as administratrix of the estate of her deceased husband, brought this suit against the appellant, the decedent's employer, for recovery of damages, under the Jones Act, for the death of her husband, predicating liability upon negligence, while decedent was acting as a member of the crew of the Mary Virginia,

a vessel operated and controlled by appellant on Lake Salvadore.

The plaintiff alleged that on February the 4th, 1953, at Well No. 20 in Lake Salvadore, the deceased was in the process of opening a valve, which exploded and blew him off the well platform into the water and caused his death. Several grounds of negligence were alleged, among which were that the valve was defective, which fact should have been known to the Texas Company; that the company failed to furnish a sufficient number of competent employees; and failed to furnish a safe place for the decedent to work. In the alternative, plaintiff sought to recover under the Longshoremen's & Harborworkers' Act, and under the Louisiana Workmen's Compensation Law. These alternatives were reserved by agreement, and are not before the Court at this time. The trial below resulted in a verdict and judgment for the plaintiff.

The decisive point on this appeal is whether there was substantial evidence to support the jury's finding that decedent was a member of the crew of the Mary Virginia, which is a question of fact. In denying the motions below, the Court said that if it were "writing on a new slate before Martin," it might have some misgivings as to this finding. The Court was referring to *Texas Company* v. *Gianfala*, 222 F. (2) 382, 350 U. S. 879, 76 S. Ct. 141; rehearing denies January 30, 1956, 76 S. Ct. 346. The appellant's contention is that, at the time of his death, the decedent was not in the service of the vessel Mary Virginia, and that there is no substantial evidence to support the jury's findings on this point.

We agree with appellant that the Supreme Court in the Martin case did not intend to do away with the established federal procedure, whereby in a civil action at law the judge may direct a verdict if there is no issue of fact to be submitted to the jury on a decisive issue; provided, of course, even where there is no conflict in the evidence, if reasonable minds may fairly draw conflicting inferences from the same evidence, requiring different verdicts, the issue is for the jury to determine the correct inference.

From the undisputed facts in this case, the decedent was employed as a roustabout by appellant. He was employed to work on the platforms, not on the vessel. There is no substantial evidence to support the jury's finding that he was a member of the crew. He was an oil-field worker strictly, and not a boat crewman. His duties did not pertain to navigation, not even the casual task of throwing a rope or making the boat fast, a service that readily could be performed by a harbor worker. He had no such duties to perform. He was merely a passenger on the Mary Virginia, and he was not on the boat when he met his death.

The judgment appealed from is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

REVERSED.

A True Copy:
Teste:

Clerk of the United States Court
of Appeals for the Fifth Circuit.

APPENDIX III

ON PETITION FOR A REHEARING

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16188

THE TEXAS COMPANY,
Appellant,

versus

MRS. MAROWIGNE EDNA McCONNELL SAVOIE,
Administratrix of the estate of HORACE P. GUIDRY,
Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana

---

(April 9, 1957.)

Before HUTCHESON, Chief Judge, and HOLMES and BORAH, Circuit Judges.

HOLMES, Circuit Judge: The motion of appellee for leave to file twenty photostatic copies of the decision of the Supreme Court in *Senko v. LaCrosse Dredging Corporation*, No. 62, Oct. Term, 1956, should be overruled, because

all of the judges of this court already have printed copies of said opinion, and to file twenty photostatic copies of the same would unnecessarily encumber the records in the clerk's office.

After a careful consideration of the petition for rehearing, including said Senko opinion, we think that the petition should be denied, because the applicable legal principle announced in Senko v. LaCrosse Corporation was the law which we announced and applied in the instant case. The factual distinction between the two cases is that in the one before us there was no evidence reasonably tending to show that the decedent was a member of the crew; whereas in the one cited there was sufficient evidence to support the finding, the Supreme Court holding that there was sufficient evidence in the record for the jury to decide that the petitioner was permanently attached to and employed by the dredge as a member of its crew. No question was raised as to whether the dredge involved had the status of a vessel at the time of the injury.

The essence of the decision in the Senko case was that the determination of whether an injured person was a member of the crew was to be left to the finder of fact, which means that juries have the same discretion in determining whether an injured person was a member of a crew as they have in finding negligence or any other fact. The essence of this discretion is that a jury's decision is final if it has a reasonable basis to support it, whether or not the appellate court agrees with the jury's estimate.

In the federal court a jury's finding of fact must have substantial evidence to support it; a scintilla of evidence is

not sufficient. There was substantial evidence to sup[port] the finding in Senko v. LaCrosse Dredging Corporat[ion] because there was testimony introduced by petitioner t[end]ing to show that he was employed almost solely on dredge, that his duty was primarily to maintain t[he] during its anchorage and for its future trips, and th[at] would have a significant navigational function, w[hen] dredge was put in transit. For this reason, the [order] below was reversed, and the case was remanded f[or] ment on two issues which the appellate court did n[ot] in its disposition of the case.

The petition for rehearing is DENIED.

LIBRARY
SUPREME COURT U S
NOV 6 1957
JOHN T. FEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 250

MRS. MAROWIGNE EDNA McCONNELL SAVOIE,
ADMINISTRATRIX OF THE ESTATE OF
HORACE P. GUIDRY,

Petitioner,

versus

THE TEXAS COMPANY,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

CLAY, COLEMAN,
DUTREY & THOMSON,
ELWOOD R. CLAY,
JAMES JULIAN COLEMAN,
LOUIS J. DUTREY,
JACK W. THOMSON, JR.,
Counsel for Petitioner,
1649 National Bank of Commerce Bldg.,
New Orleans 12, Louisiana.

SUBJECT INDEX

	Page
PETITION FOR REHEARING	1
BASIC FACTS	2
ARGUMENT:	
I.	2
II.	8
III.	9
IV.	10
V.	12
CONCLUSION	14

CASES CITED

Aetna Ins. Co. v. Kennedy, 301 U. S. 389, 57 S. Ct. 809, 81 L. Ed. 1177 (1936)	14
Baltimore & O. Terminal R. Co., 142 F. (2d) 779 (CCA 7th 1944)	9
Fairmount Glass Works & Coal Co., 287 U. S. 474, 53 S. Ct. 252, 77 L. Ed. 439 (1933)	9
Home Ins. Co. v. Tydal Co., 152 F. (2d) 309 (CCA 5th 1946)	10
Schulz v. Penn. R. R. Co., 350 U. S. 523, 76 S. Ct. 608 (1956)	11
Slocum v. New York Life Ins. Co., 228 U. S. 364, 33 S. Ct. 523, 57 L. Ed. 879 (1912)	12
Tennant v. Peoria & P. U. R. Co., 321 U. S. 29, 64 S. Ct. 409, 88 L. Ed. 520	8

CASES CITED—(Continued)

Page

The Texas Company v. Martin, 350 U. S. 879, 76 S. Ct. 141 (1955) 11

Texas Company v. Savoie, 240 F. (2d) 674, reh. den. 242 F. (2d) 667 (1957) 3

UNITED STATES CONSTITUTION CITED

Seventh Amendment 2, 7, 12, 13

STATUTE CITED

Act of March 4, 1915, c. 153, Sec. 20, 38 Stat. 1185; as amended June 5, 1920, c. 250, Sec. 33, 41 Stat. 1007; 46 U.S.C. 688, Jones Act 2, 14

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 250

MRS. MAROWIGNE EDNA McCONNELL SAVOIE, ADMINISTRATRIX OF THE ESTATE OF HORACE P. GUIDRY,

Petitioner,

versus

THE TEXAS COMPANY,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable, The Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays for a rehearing of the order of this Honorable Court dated October 14, 1957, denying her petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

BASIC FACTS.

This was an action brought by the administratrix of the late Horace P. Guidry's estate to recover damages for his death alleged to have been caused by the negligence of his employer, The Texas Company. The suit was brought under the Jones Act. A jury heard the case and awarded plaintiff damages in the amount of $80,000.00. The judgment was later remitted to $40,000.00. On appeal to the Fifth Circuit Court of Appeals the judgment was reversed on the ground that there was not sufficient evidence to support the finding by the jury that the decedent was a seaman.

ARGUMENT.

I.

A Fact is Not "Undisputed" if the Evidence is Contradictory on the Point in Question and There Has Not Been a Stipulation of Fact, and Where An Appellate Court Overturns a Jury Determination of Fact Upon the False Premise That Certain Material Facts Were "Undisputed", Such Decision Must Be Reversed as Being in Contravention of the Seventh Amendment.

The essence of the Fifth Circuit opinion is contained in the last paragraph thereof and clearly reveals that that Court regarded as "undisputed" a number of facts which are important to the question of whether the decedent in this case was a seaman. The paragraph reads as follows:

> "From the **UNDISPUTED FACTS** in this case, the decedent was employed as a roustabout by appellant. He was employed to work on the platforms,

not on the vessel. There is no substantial evidence to support the jury's finding that he was a member of the crew. He was an oil-field worker strictly, and not a boat crewman. His duties did not pertain to navigation, not even to the casual task of throwing a rope or making the boat fast, a service that readily could be performed by a harbor worker. He had no such duties to perform. He was merely a passenger on the Mary Virginia, and he was not on the boat when he met his death." (Emphasis added).

Texas Company v. Savoié, 240 F. (2d) 674, reh. den. 242 F. 2d 667 (1957).

We agree with the conclusion of the Fifth Circuit that if the above were the undisputed facts of this case there may be some basis for holding that the man was not a seaman. But it is not according to principle to state an opinion that facts are "undisputed" when in truth and in fact these very facts were the most hotly contested part of the case and were held by the jury to be exactly opposite from facts that the appellate court holds as "undisputed". The jury disputed the facts that the Fifth Circuit holds in their opinion as "undisputed" because the jury answered specific questions submitted by the judge as to the facts.

The testimony of the witnesses, the argument of counsel, the instructions of the trial court, the findings of the jury, the rulings of the trial court on various motions, all show that the above facts are very much disputed.

There was no stipulation of facts between counsel in this case. If by the use of the word "undisputed" the appellate court meant to convey such a stipulation, this is completely erroneous. This part of the opinion was not pointed out to this Court in the original application for writs as the full import of the finding of "undisputed" facts was not revealed until the questioning of counsel in regard to this decision.

One of The Texas Company's employees testified that the decedent was employed as a roustabout. The evidence presented by the plaintiff against this claim was that, (1) the decedent employed the men who were in charge of the boat, (2) the decedent had complete charge of the navigation of the boat, (3) the decedent spent a great portion of his time aboard the boat, (4) it was impossible for the boat to be navigated, brought up to 20 or 30 different wells a day, tied up, untied with only one man aboard and that it was the decedent's duty to fulfill the responsibility of a seaman aboard the boat over which he had complete charge as a result of the hiring of men on the boat. The question the jury had to determine was whether they would believe The Texas Company's evidence that the man was just a roustabout, or plaintiff's evidence that the man was a seaman in charge of the boat, in charge of navigation and performing the necessary duties required for a two man crew aboard a 44-foot lugger. The Fifth Circuit Court may honestly have believed The Texas Company's witnesses. The twelve jurors honestly believed the evidence of the plaintiff. The only place where the word "undisputed" can be used is that undoubtedly the Fifth Circuit believed the facts as presented by The Texas Company to be undisputed and not

have given any weight to the facts that were found by the jury from the evidence that was presented to them.

So much for the undisputed fact as to the employment of decedent as a roustabout against plaintiff's contention that decedent was employed to take charge of the Mary Virginia as a seaman to perform seaman's services while aboard the Mary Virginia and that this was what he actually did during the period of his employment. The crowning proof that The Texas Company's testimony as to the employment of decedent as a roustabout was subject to clear question is that not one witness who testified was with the company when the decedent was employed, as the decedent had sixteen years of service, which was longer than any of those who testified for the defendant.

The second undisputed fact that the Fifth Circuit Court found was that decedent "was employed to work on the platforms and not on the vessel". The Texas Company's witness testified to this fact. The evidence presented by the plaintiff was directly contradictory and opposed to The Texas Company's witness's testimony. It was admitted that it took at least a two man crew to operate the 44-foot lugger Mary Virginia. The jury found as a fact that the decedent had to be serving as a boat crewman on the Mary Virginia because they believed the defendant's own witness as to this fact. There was nothing disputed about the fact that it took two men to operate the Mary Virginia in its daily cruise to 30-odd different oil wells, yet the Fifth Circuit found that it was undisputed that the decedent was not a crewman.

The following are additional "undisputed" facts found by the Fifth Circuit opinion: (3) decedent was "an

oil-field worker strictly", (4) decedent was "not a boat crewman", (5) decedent's "duties did not pertain to navigation", (6) decedent's duties pertained "not even to the casual task of throwing a rope", (7) decedent's duties pertained not even to "making the boat fast", (8) the above (6) and (7) duties "could be performed by a harbor worker". (Note: We would be derelict if we did not point out that the jury certainly found docking, tying up and holding alongside the 44-foot lugger Mary Virginia out in the middle of a large body of water was certainly a completely different duty from a harbor worker who stands on shore to tie up a vessel. The decedent's duty aboard the Mary Virginia forced him to be both aboard the lugger during the tie up period if the other crewman jumped off and stood on the platform or *vice versa*, it being the clear testimony that many times the lugger pulled alongside only momentarily while one of the men jumped off to examine a chart and then returned aboard the lugger. WE CAN NOT IMPRESS THE COURT TOO STRONGLY WITH THE JURY'S FINDING OF FACT THAT IT TOOK TWO MEN, THE DECEDENT AND THE OTHER MAN ABOARD, TO OPERATE, NAVIGATE AND HANDLE THE LARGE 44-FOOT LUGGER MARY VIRGINIA. Great stress undoubtedly was put on this undisputed fact wherein the jury had to come to the conclusion that the decedent was a seaman, yet not once has the Circuit Court even so much as mentioned this undisputed fact. Not only is the fact admitted in evidence by expert witnesses of The Texas Company who honestly admitted to this fact, but there is documentary evidence in the charter party which clearly shows that there was need for two men aboard the 44-foot lugger by the very

terms of the charter. The jury was composed of men who know this area and undoubtedly were familiar with boats, so there was no question in their minds on hearing a description of the duties of the Mary Virginia of the importance of this undisputed fact in reaching their conclusion). (9) decedent had no such duties to perform, *i. e.*, as a crewman, (10) decedent was merely a passenger on the Mary Virginia and (11) decedent was not on the boat when he met his death. We must honestly admit that the last fact found by the Fifth Circuit as an undisputed fact is the one and only undisputed fact that both plaintiff and defendant testimony was in complete agreement.

The chief basis for petitioner's request in this portion of the rehearing motion is based solely on the fact that if the appellate court has a right to find "undisputed facts" from a record full of highly controversial facts, the right of trial by jury protected by the United States Constitution in the Seventh Amendment is of no practical use. It is respectfully urged to the Court that a review of the record will reveal that the constitutional right granted to the petitioner for a trial by jury has been completely withdrawn through the use of finding "undisputed facts" when such undisputation does not exist.

A decision reversing a jury and which purports to rest upon "undisputed facts" cannot be permitted to stand when it is shown that the facts are very much in dispute. This would constitute a reexamination of facts not in accordance with the Seventh Amendment to the Constitution. A labeling of facts as "undisputed", when they are disputed and contradicted by the evidence, deprives petitioner of her right to trial by jury, because if it is as-

sumed, as petitioner contends, that such facts were in dispute, then the basis for the Fifth Circuit Court decision falls. This Honorable Court should grant certiorari to determine, at the very least, whether petitioner's contention is valid, *i. e.*, that the facts recited in the opinion of the Fifth Circuit were not undisputed and find contradiction in the evidence, in the rulings of the lower court, in the findings of the jury and even in certain respects, in the argument of respondent's counsel before the jury.

> "The very essence of (the jury's) function is to select from among conflicting inferences and conclusions that which it considers most reasonable."
>
> *Tennant v. Peoria & P. U. R. Co.*, 321 U. S. 29, 35, 64 S. Ct. 409, 412, 88 L. Ed. 520.

II.

The Court of Appeals for the Fifth Circuit Was Without Jurisdiction to Hear Respondent's Appeal Since Respondent Attempted to Appeal From an Order Granting a New Trial Conditioned Upon a Remittitur, and Such an Appeal, Not Being From a Judgment, Did Not Confer Jurisdiction Upon the Appellate Court.

Respondent, according to its notice of appeal, took an appeal from "the judgment entered in this action on the 11th day of May, 1956. . . ." (R. 232). The record discloses an entry on May 10, 1956 of an order granting a new trial. (R. 231). The verdict of the jury, which was made the judgment of the District Court as remitted, was entered on March 20, 1956, (R. 203), about seven weeks prior to the date specified in respondent's appeal. There is no "judgment of May 11, 1956" in this proceeding.

It is well settled in federal practice that no appeal lies from an order granting or denying a new trial. *Fairmount Glass Works v. Coal Co.*, 287 U. S. 474, 53 S. Ct. 252, 77 L. Ed. 439 (1933); *Baltimore & O. Terminal R. Co.*, 142 F. (2d) 779 (CCA 7th 1944), *cert. den.* 323 U. S. 775, 65 S. Ct. 135. In the event an appeal is taken from an order granting a new trial, the appellate court is without jurisdiction to hear the appeal, and the appeal should be dismissed forthwith. *Baltimore & O. Terminal R. Co., supra.* There are no circumstances present in this case to excuse the action of respondent in appealing from an order granting a new trial rather than a judgment and, accordingly, the Court of Appeals for the Fifth Circuit was in error in not having dismissed the appeal.

III.

A Federal Appellate Court Does Not Normally Review the Verdict of a Jury But Only the Acts of the Judge, and a Mere Reexamination of the Facts Without a Finding of Error on the Part of the Judge Does Not Authorize a Reversal of a Jury Verdict.

The Fifth Circuit directly reviewed the facts of the instant case. After its independent probe of the evidence it substituted its appreciation of the evidence for the findings of the jury. On the other hand the Fifth Circuit, in its opinion, specifies no error, nor an abuse of discretion, on the part of the trial judge. The lower court had examined the sufficiency of the facts upon three occasions, *i. e.*, when he denied respondent's motion for directed verdict, when he denied respondent's motion for judgment *n.o.v.*, and when he granted a partial new trial on the sole issue of damages.

In 1946 the Fifth Circuit Court of Appeals stated in *Home Ins. Co. v. Tydal Co.*, 152 F. 2d 309 (CCA 5th 1946) as follows:

> "In the federal system appellate courts do not normally review the verdict of the jury, but only the acts of the judge. The trial judge alone has the right and duty to set the verdict aside if dissatisfied with it. The most an appellate court can do, if it thinks the verdict not according to the weight of the evidence, is to scan the trial more closely for error. We are not impressed that this verdict is wrong."

It is submitted that the Fifth Circuit was without authority to reexamine the facts absent a finding of error in the acts of the trial judge.

The Fifth Circuit exceeded the scope of permissible review when it probed directly into the facts and testimony of this case without deciding upon the correctness of the acts of the trial judge who upon three occasions had ruled that the evidence did support the jury finding that decedent was a seaman.

IV.

Determination by Juries of the Status of Thousands of Persons Employed in Maritime Jobs in Gulf Waters Will Be Adversely Affected if the Decision of the Fifth Circuit is Allowed to Stand.

The states comprising the Fifth Circuit, namely, Texas, Louisiana, Mississippi, Alabama, Georgia and Florida, front on the Gulf of Mexico, with the exception of

Georgia, and all have a vital interest in the orderly judicial process by which the rights of maritime employees will be determined.

The Fifth Circuit Court of Appeals reversed a finding by the jury that a barge worker was a seaman under the Jones Act in the case of *The Texas Company v. Martin*, 222 F. 2d 382, 350 U. S. 879, 76 S. Ct. 141; *reh. den.* 76 S. Ct. 346. In a *per curiam* by the Supreme Court, the action of the Fifth Circuit was reversed and the judgment of the lower court was reinstated.

Following on the heels of *Martin*, the instant decision will considerably weaken the effectiveness of jury findings on the question of seaman status in that large group of persons in borderline situations who quite clearly have maritime employment, but who do not fit into the classic definition of seamen. This Court should take certiorari in the instant case in order that a clarifying pronouncement on the status of these maritime workers can be rendered and particularly that the conflict between *Martin* and the instant case be resolved. The Gulf waters are particularly affected by this problem due to the tremendous growth of industrial activity in coastal waters and just inside the coastline.

As Mr. Justice Black said in *Schulz v. Pa. R. R. Co.*, 76 S. Ct. 608, 350 U. S. 523 (1956), the jury trial is part and parcel of the remedy afforded seamen under the Jones Act. This Honorable Court must ever be alert to prevent "judicial erosion" of the guarantee of jury trial under the Seventh Amendment and that need is particularly felt in the Fifth Circuit where so many maritime employees are affected.

V.

Under Common Law Procedure if Facts Are Reexamined by an Appellate Court and Are Found to Have Been Determined Erroneously by a Jury, the Appellate Court May Not Order a Reversal of the Judgment But Can Only Remand the Case for a New Trial.

The Fifth Circuit reexamined the facts of the instant case and, based upon its own finding of fact, ordered a reversal of the judgment entered upon the jury's verdict. Such action finds no precedent in common law procedure and therefore violates the Seventh Amendment to the Constitution of the United States. The Seventh Amendment secures the individual litigant from an appellate court's reexamination of jury facts other than in accordance with common law procedure.

Under the common law when an appellate court sets aside a jury verdict for an error in fact the suitor is not thereby deprived of his right of trial by jury, which is retained, but the suitor may be ordered to submit to a new trial of the cause before a new venire. In 1912 this Honorable Court ruled upon the point under discussion in the following words, taken from *Slocum v. New York Life Ins. Co.*, 228 U. S. 364, 377, 33 S. Ct. 523, 57 L. Ed. 879 (1912):

> "'. . . Now, according to the rules of the common law the facts once tried by a jury are never reexamined, unless a new trial is granted in the discretion of the court, before which the suit is depending, for good cause shown; or unless the judgment of such court is reversed by a superior tri-

bunal, on a writ of error, and a *venire facias de novo* is awarded. This is the invariable usage settled by the decisions of ages'."

"In *Parsons v. Bedford*, 3 Pet. 433, decided in 1830, the same learned justice, speaking for this court, said (p. 446): 'The trial by jury is justly dear to the American people. It has always been an object of deep interest and solicitude, and every encroachment upon it has been watched with great jealousy. . . . One of the strongest objections originally taken against the Constitution of the United States, was the want of an express provision securing the right of trial by jury in civil cases. As soon as the Constitution was adopted, this right was secured by the Seventh Amendment of the Constitution proposed by Congress, and which received an assent of the people so general as to establish its importance as a fundamental guarantee of the rights and liberties of the people.' And then coming to the clause, 'and no fact tried by a jury shall be otherwise reexamined in any court of the United States, than according to the rules of the common law,' he continued (pp. 447, 448): 'This is a prohibition to the courts of the United States to reexamine any facts tried by a jury in any other manner. The only modes known to the common law to reexamine such facts, are the granting of a new trial by the court where the issue was tried, or to which the record was properly returnable, or the award of a *venire facias de novo*, by an appellate court, for some error of law which intervened in the proceedings.' . . ."

The Fifth Circuit trespassed upon the constitutional rights of petitioner when it presumed to reverse the judgment on the evidence without benefit of a new trial. *Slocum* has not been overruled but, in fact, has been reaffirmed in *Aetna Ins. Co. v. Kennedy*, 301 U. S. 389, 57 S. Ct. 809, 81 L. Ed. 1177 (1936). Congress, in fashioning the Jones Act, intended that the issues comprehended by an action thereunder should be decided by a jury if requested. Petitioner has demanded her right of trial by jury throughout this action and has never waived same. It is unconstitutional for her to be deprived of a new trial before a jury as to any issue upon which the appellate court has set aside the judgment for error in fact.

CONCLUSION.

For the foregoing reasons, petitioner respectfully prays that the order of this Court denying her petition for a writ of certiorari to the Court of Appeals for the Fifth Circuit be reheard and vacated and that the said petition for certiorari be granted.

Respectfully submitted,

CLAY, COLEMAN,
DUTREY & THOMSON,
ELWOOD R. CLAY,
JAMES JULIAN COLEMAN,
LOUIS J. DUTREY,
JACK W. THOMSON, JR.,
Counsel for Petitioner,
1649 National Bank of Commerce Bldg.,
New Orleans 12, Louisiana.

New Orleans, Louisiana,
November ....., 1957.

CERTIFICATE OF COUNSEL.

The undersigned, Jack W. Thomson, Jr., attorney for petitioner, hereby certifies that the petition for rehearing filed in this cause is presented in good faith, and that in his judgment said petition is restricted to the grounds specified in Paragraph 2 of Rule 58 of the Supreme Court Rules, and that foregoing petition for rehearing is not presented for delay.

JACK W. THOMSON, JR.

CERTIFICATE OF SERVICE.

I, the undersigned counsel, do hereby certify that a copy of the foregoing petition for rehearing has been served upon Messrs. John May and Ernest A. Carrere, Jr., counsel of record for respondent, and Mr. D. Douglas Howard, of counsel for respondent, by transmission through the U. S. Mails, properly addressed and stamped, this
day of November, 1957.